

CONDOMINIUM DOCUMENTS

FORT LAUDERDALE RESIDENCES,

a Hotel Condominium

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RESIDENCES,**
a Hotel Condominium

PROSPECTUS
FOR
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RESIDENCES,**
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**PROSPECTUS
FOR
FORT LAUDERDALE RESIDENCES,
A HOTEL CONDOMINIUM**

1. THIS PROSPECTUS CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.

2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS AND SALES MATERIALS.

3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

This Prospectus has been prepared pursuant to the Condominium Act, Chapter 718, Florida Statutes, as amended through the date of filing this Prospectus (the "Act"), in connection with the offering of condominium units for sale which includes one hundred seventy-one (171) Hotel Condominium Units (the "Hotel Condominium Units") and one (1) Shared Facilities Unit (the "Shared Facilities Unit"), in the Fort Lauderdale Residences, a Hotel Condominium (the "Condominium"). The Condominium is being developed by Capri Resorts, LLC, a Florida limited liability company (the "Developer"), whose mailing address is c/o Colonial Development Group, LLC, Suite 1050, 515 East Las Olas Boulevard, Fort Lauderdale, Florida 33301.

The Act requires that Developer set forth on this and the following page of the Prospectus the following statements with regard to a residential or mixed-use Condominium:

- **THIS PROSPECTUS CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.**
- **THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.**
- **ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. PLEASE REFER TO THIS PROSPECTUS AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.**
- **THE CONDOMINIUM WILL BE CREATED AND UNITS WILL BE SOLD IN FEE SIMPLE INTERESTS.**

The Condominium will not have a recreation lease or a land lease association.

The Fort Lauderdale Residences Hotel Condominium Association, Inc., a Florida not for profit corporation, or other similarly named Florida not for profit corporation, organized by Developer under Chapter 617, Florida Statutes (the "Association"), will be created to operate the Condominium. The Association will be established when the Articles of Incorporation of the Association, a copy of which is attached to this Prospectus as Exhibit E to the Declaration (as defined below), are filed with the Florida Secretary of State. The Articles of the Association will set forth the purposes and powers of the Association and will establish a Board of Directors responsible for managing the affairs of the Association. The Bylaws of the Association, a copy of which is attached to this Prospectus as Exhibit F to the Declaration, will set forth the codes of rules adopted for the regulation or management of the Association.

- **THE DEVELOPER HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.**

Developer's right of control terminates at the time set forth in Section 5 of the Bylaws of the Association, attached to this Prospectus as Exhibit F to the Declaration. For further information about this right of control, please see Section 718.301, Florida Statutes. Also refer to Sections 1.6 and 2.3 of this Prospectus, respectively entitled the "The Fort Lauderdale Residences Hotel Condominium Association, Inc." and "Bylaws of the Association."

- **THE SALE, LEASE OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.**

For further information about these restrictions and controls see Sections 16.8 and 17 of the Declaration, attached hereto as Exhibit 1, and the discussion in Section 2.1.4 of this Prospectus entitled "Sale, Lease or Transfer of Units."

- **THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.**

Although Developer has no specific plans to do so, Developer reserves the right to lease Hotel Condominium Units and to sell them subject to such leases. For further information about this right to lease, please refer to the discussion in Section 2.1.7 of this Prospectus entitled "Right of Developer to Lease Units and Other Rights" and to Sections 16.8 and 17 of the Declaration, a copy of which is attached as to this Prospectus as Exhibit 1.

- **DEVELOPER RESERVES THE RIGHT TO ELIMINATE, EXPAND OR ADD ANY OF THE PROPOSED FACILITIES PRIOR TO COMPLETION OF CONSTRUCTION.**

For further information, see Section 8.2 of the Declaration attached hereto as Exhibit 1 and Sections 2.1 and 3.4 of this Prospectus, respectively entitled the "Declaration and Restrictions Contained Therein" and "Changes to Condominium Recreational Facilities located within the Shared Facilities Unit or Recreational and other Facilities within the Adjoining Parcel"

- **RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION.**

The condominium recreational facilities are located within the Shared Facilities Unit and not within the Common Elements. The Shared Facilities Unit Owner reserves the right at any time to eliminate, provide, alter, or expand any of the recreational facilities within the Shared Facilities Unit as the Shared Facilities Unit Owner deems appropriate. The consent of the Hotel Condominium Unit Owners or the Association shall not be required for any such construction, expansion or other determination. For further information, see Section 8.2 of the Declaration

attached hereto as Exhibit 1 and Section 3.4 of this Prospectus entitled "Changes to Condominium Recreational Facilities located within the Shared Facilities Unit or Recreational and other Facilities within the Adjoining Parcel".

- **THERE IS A LIEN OR A LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE MAINTENANCE, OPERATION, UPKEEP AND REPAIR OF THE RECREATIONAL OR COMMONLY USED FACILITIES. THE UNIT OWNERS FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.**

The Association has lien rights against Unit Owners to secure the payment of Assessments due to the Association for Common Expenses.

The Shared Facilities Unit Owner and the Adjoining Parcel Owner, respectively, have lien rights against each Hotel Condominium Unit to secure payment of fees, charges and exactions coming due for the maintenance, operation, upkeep, and repair and use of the Shared Components and portions of the Adjoining Parcel utilized by or for the benefit of the Condominium. The failure to make these payments by the Hotel Condominium Unit Owner may result in foreclosure of the respective liens.

For further information, see Section 12 of the Declaration attached hereto as Exhibit 1 and Section 2.1, 4.4 and 4.5 of this Prospectus, entitled "Declaration and Restrictions Contained Therein", "Budgetary Materials" and "Enforcement".

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SECTION 1. GENERAL INFORMATION

1.1 Introduction

1.1.1. The name of the condominium is the FORT LAUDERDALE RESIDENCES, a HOTEL CONDOMINIUM (the "Condominium"). The Condominium is or will be located at 3101 Bayshore Drive, Fort Lauderdale, Florida. The Condominium is being created pursuant to the Condominium Act, Chapter 718, Florida Statutes, as amended through the date of filing of this Prospectus (the "Act"), and is being developed by CAPRI RESORTS, LLC, a Florida limited liability company, its successors and such of its assigns as to which the rights of Developer under the Declaration or otherwise are specifically assigned (the "Developer"). A Hotel Condominium Unit Owner shall not be considered, solely by virtue of purchasing a Hotel Condominium Unit, a successor or assign of Developer or of the development rights of Developer under the Condominium Documents (defined below), unless such Hotel Condominium Unit Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Developer. See the Declaration (defined below) for further descriptive information of the Developer. Unless otherwise provided in this Prospectus, all capitalized terms used in this Prospectus shall have the meanings ascribed to those terms in the documents that are attached hereto as Exhibits.

1.1.2. Developer owns the unsold Units in the Condominium that are being offered for sale pursuant to this Prospectus. The Condominium will be created when the Declaration of Condominium of the Fort Lauderdale Residences, a Hotel Condominium (the "Declaration") is recorded in the Public Records of Broward County, Florida. When constructed, the Condominium will contain a total of one hundred seventy-two (172) Units, consisting of one hundred seventy-one (171) Hotel Condominium Units (the "Hotel Condominium Units"), and one (1) Shared Facilities Unit (the "Shared Facilities Unit"). The Hotel Condominium Units and the Shared Facilities Unit are collectively referred to as the Units (the "Units"). The Hotel Condominium Units shall be contained within a nineteen (19) story building constructed upon and supported by two (2) separate pedestal buildings. The Shared Facilities Unit is also contained in such nineteen (19) story tower and the fifth floor of the West Pedestal (as hereinafter defined in Section 1.5.1 below) which supports the nineteen (19) story tower and portions of the fifth floor of the Central Pedestal (as hereinafter defined) which also supports the nineteen (19) story tower. The nineteen (19) story tower, the fifth floor of the West Pedestal and the portion of the fifth floor of the Central Pedestal included in the Shared Facilities Unit shall be referred to as the "West Tower." The remainder of the two supporting pedestal buildings is not part of the Condominium. The owners of the Hotel Condominium Units (the "Hotel Condominium Unit Owner(s)") and the owner of the Shared Facilities Unit (the "Shared Facilities Unit Owner") are collectively referred to as the Unit Owners (the "Unit Owners").

1.1.3. The Condominium Property will consist only of the Units described herein, and the Common Elements described in the Declaration, with certain recreational facilities located on the Condominium Property as described in Section 3.2 of this Prospectus and specifically located within the Shared Facilities Unit. Most of the shared facilities in the West Tower that are typically included in the "common elements," (e.g., hallways, elevators, external walls and doors, etc.) have been designated by the Declaration to be included instead as Shared Components in the Shared Facilities Unit, as defined in Section 1.4.3 of this Prospectus. All parking, other recreational and other commonly used facilities will be part of the adjoining parcel ("Adjoining Parcel") as further described in Section 1.5.1 of this Prospectus, as constructed or to be constructed upon the Adjoining Parcel, and not part of the Condominium, as more particularly described in this Prospectus. The Shared Facilities Unit Owner and its designees and the Hotel Condominium Unit Owners, their tenants and guests (subject to applicable restrictions, rules, regulations and charges, if any) will have the exclusive use of the Association Property (as defined in the Declaration) and use of commonly used facilities that may be made part of the Condominium and which are situated upon or within the Shared Facilities Unit, as well as the right to use certain of the hotel facilities and services provided in the Adjoining Parcel, all as more particularly described in this Prospectus. The owner or owners of the Adjoining Parcel from time to time shall be referred to as the "Adjoining Parcel Owner."

1.1.4. The estimated latest date of completion of the construction, finishing and equipping of the Condominium is October 31, 2007, except as provided to the contrary in the Real Estate Purchase Agreement (the "Purchase Agreement") set forth as Exhibit 4 hereto.

1.1.5. The number of bedrooms and bathrooms in each Hotel Condominium Unit is set forth below in Section 1.4 of this Prospectus.

1.1.6. A copy of the proposed Survey, Plot Plan and Graphic Description of the Units, including floor plans of the Units, is attached to the Declaration as Exhibit C. The Survey, Plot Plan, descriptions, and floor plans are only approximate depictions and are subject to substantial modification during permitting and construction. Said Exhibit C, together with the proposed Declaration, are sufficient in detail to identify the Common Elements, the Shared Facilities Unit and the Hotel Condominium Units and their relative locations and dimensions.

1.1.7. There is neither a recreation lease nor a land lease associated with the Condominium. No recreational facilities are intended to be constructed on the Common Elements, but certain recreational facilities are intended to be constructed within the Shared Facilities Unit and included within the Shared Components, see Section 3.2 below; and refer to Sections 2.1.2, 3.3 and 6 below for further details regarding the easement usage rights and obligations that Hotel Condominium Units Owners will have in the recreational, parking and other facilities that are to be constructed on the Adjoining Parcel.

THE CONDOMINIUM WILL BE CREATED AND UNITS WILL BE SOLD IN FEE SIMPLE INTERESTS.

1.2 Concept of Condominium Ownership in the Condominium

1.2.1. Briefly stated, the concept of condominium ownership means that a Unit Owner acquires his or her Unit in fee simple together with an undivided interest in Association Property of the Condominium in which the Unit is located. The Association Property that is used or may be used in common with other Unit Owners, constitute "Common Elements" (as such term is defined in the Declaration). The Common Elements consist of all parts of the Condominium Property that are not included in the Hotel Condominium Units and the Shared Facilities Unit. All Hotel Condominium Unit Owners become members of the Association, as more particularly described in Section 1.6 below, when they purchase or otherwise acquire their Hotel Condominium Unit. The Shared Facilities Unit Owner is also a member of the Association.

1.2.2. Each Hotel Condominium Unit is conveyed to a Hotel Condominium Unit Owner by separate Condominium Special Warranty Deed, the form of which is attached as Exhibit 3 to this Prospectus. Each Hotel Condominium Unit Owner owns his or her Hotel Condominium Unit subject to the limitations on use and leasing rights as more particularly described herein. Any mortgage on a Hotel Condominium Unit is the responsibility of that Hotel Condominium Unit only, and no other Hotel Condominium Unit is subject to the lien of any mortgage placed on any other Hotel Condominium Unit.

1.2.3. The Shared Facilities Unit will be conveyed to the Shared Facilities Unit Owner.

1.3 Developer

The Developer of the Condominium, Capri Resorts, LLC, a Florida limited liability company, was organized in July of 2002 to design, develop, finance, construct and market the Condominium. Being a newly formed entity, Developer has no prior experience in the area of condominium or other real estate development. Therefore, its experience is limited to the development of this Condominium. Developer has no significant assets. The chief executive officer of CAPRI MANAGER, INC., the sole manager of the Developer, Joseph R. Cook, will have the primary day-to-day responsibility of directing the creation and sale of the Condominium. Joseph R. Cook has been in the real estate investment and development business, internationally and in Florida, for over twenty (20) years.

The information provided above as to Mr. Joseph R. Cook is not intended to create or suggest any personal liability on the part of Mr. Joseph R. Cook.

1.4 Plan for Development of the Condominium

1.4.1. The Condominium is expected to be comprised of a nineteen-story building, certain condominium recreational facilities, and certain use rights in and to the Adjoining Parcel as described in this Prospectus. The West Tower, together with the Adjoining Parcel, will comprise a mixed-use development which is expected to include the Units, additional units in the East Tower and a retail complex, which will generally be bounded on the east by State Road A-1-A and the Atlantic Ocean, on the north by Riomar Street, on the south by Bayshore Drive, and on the west by Birch Road.

1.4.2. Each of the nineteen floors of the West Tower will contain a combination of two-bedroom, two-bath Hotel Condominium Units and one-bedroom, one-bath Hotel Condominium Units, as more particularly described in the Declaration, Exhibit 1, and Schedule A attached to this Prospectus. The open-air deck on the fifth floor of the West Pedestal, included as part of the West Tower, will contain terraces (which are reserved exclusively for the adjacent Hotel Condominium Units located on the first floor of the West Tower) and a pool, whirlpool, cabanas (which, if constructed, may be reserved for the exclusive use of certain Hotel Condominium Units), restrooms, and other improvements, all as part of the Shared Facilities Unit. Also, a portion of the open-air deck on the fifth floor of the Central Pedestal, included in the West Tower, will contain terraces that are reserved exclusively for the adjacent Hotel Condominium Units located on the first floor of the West Tower, as part of the Shared Facilities Unit.

1.4.3. Given the integration of the improvements to be constructed within the Condominium Property and notwithstanding anything to the contrary depicted on the survey/plot plan attached to the Declaration, the following components of the Condominium (the "Shared Components") will be deemed part of the Shared Facilities Unit, whether or not graphically depicted as such on the survey/plot plan: any and all structural components of the improvements, including, without limitation, all floor slabs, all exterior block walls and all glass, finishes (paint, stucco, etc.) and balconies, terraces and/or facades attached or affixed thereto; the roof; all roof trusses, roof support elements and roofing insulation; all utility, mechanical, electrical, telephonic, telecommunications, plumbing, life safety and other systems and electromechanical systems, including, without limitation, all wires, conduits, pipes, ducts (including ducts wholly contained within the boundaries of a Hotel Condominium Unit and all items whatsoever located within such ducts), transformers, cables and other apparatus used in the delivery of the utility, mechanical, telephonic, telecommunications, electrical, plumbing and/or other services; all heating, ventilating and air conditioning systems, including, without limitation, compressors, air handlers (except for any air conditioning system or part thereof located within the boundaries of a Hotel Condominium Unit which shall be a part of the Hotel Condominium Unit), ducts, chillers, water towers and other apparatus used in the delivery of HVAC services; all elevator shafts, elevator cabs, elevator cables and/or systems and/or equipment used in the operation of the elevators traversing the Condominium Property; all trash rooms, trash chutes and any and all trash collection and/or disposal systems. Notwithstanding the foregoing, all mechanical equipment located on the roof of the Condominium Property that serves any portion of the Adjoining Parcel shall be

the property of the Adjoining Parcel Owner and not Shared Components. In addition, the Shared Components include the following areas and/or facilities contained within the Condominium Property (together with a license for reasonable pedestrian access thereto, as determined by the Shared Facilities Unit Owner): any swimming pool, whirlpool spa, sundeck, Cabana (defined below) and any other facilities that may be located from time to time within the improvements constructed upon the Shared Facilities Unit. Notwithstanding anything herein, or in any of the Exhibits hereto, contained to the contrary, the Shared Components shall be deemed part of the Shared Facilities Unit. The Shared Facilities Unit Owner shall have the right (but not the obligation), by Supplemental Declaration executed by the Shared Facilities Unit Owner alone, to designate additional portions of the Shared Facilities Unit as Shared Components hereunder. Notwithstanding the designation of the Shared Components, the Shared Facilities Unit Owner shall have the right to regulate the use thereof, without limitation, establishing hours of operation, and designating certain services to be offered from those facilities. The Shared Components shall be deemed part of the Shared Facilities Unit. See the Declaration for a further description and details concerning the Shared Components.

1.4.4. The Shared Facilities Unit Owner shall have the right (but not the obligation), by Supplemental Declaration executed by the Shared Facilities Unit Owner alone, to designate additional portions of the Shared Facilities Unit as Shared Components. Notwithstanding the designation of the Shared Components, the Shared Facilities Unit Owner shall have the right, from time to time, to expand, alter, relocate and/or eliminate the portions of the Shared Facilities Unit deemed to be Shared Components, without requiring the consent or approval of the Association or any Hotel Condominium Unit Owner, provided that any portions so withdrawn are not, in the reasonable opinion of the Shared Facilities Unit Owner, essential to the structural integrity of the Hotel Condominium Units, the provision of utilities and utility services to the Hotel Condominium Units and/or the provision of pedestrian access to and from the Hotel Condominium Units. The Shared Facilities Unit Owner also reserves the absolute right at any time, and from time to time, to construct additional facilities upon the Shared Facilities Unit and to determine whether such facilities will be deemed Shared Components and to regulate the use thereof.

1.4.5. Any and all food and beverage operations, and/or retail areas, if any, whether now or hereafter located upon or deemed to be part of the Shared Facilities Unit, are expressly excluded from the Shared Components and are deemed to be the exclusive property of, and for the exclusive use of, the Shared Facilities Unit Owner and such persons or entities designated by the Shared Facilities Unit Owner. It is expressly contemplated that persons other than Unit Owners shall be granted use rights in and to certain of the facilities of the Shared Facilities Unit (such determination to be made in the sole and absolute discretion of the Shared Facilities Unit Owner) and as further described in the Declaration. These use rights include the right to use the Shared Facilities Unit to provide hotel and other services to the Hotel Condominium Units.

1.4.6. Please refer to the Survey, Plot Plan and Graphic Description of Improvements and Floor Plans attached as Exhibit C to the Declaration, for a more particular description of the approximate dimensions of the Units and for the relative location of the Common Elements.

1.5 The Adjoining Parcel

1.5.1. The Developer also proposes to construct on the Adjoining Parcel, certain improvements adjoining but not part of, the Condominium Property. These improvements consists of all or a portion of three (3) "pedestal" buildings, to be constructed along an east-west row, and a second nineteen-story tower. For purposes of this Prospectus, the pedestal buildings shall be designated the "East Pedestal," the "Central Pedestal," and the "West Pedestal" (collectively, the "Pedestals"), and the second nineteen-story tower shall be designated the "East Tower", as more particularly described below:

1.5.1.1 East Tower. A nineteen (19) story tower containing approximately three hundred forty-six (346) units to be constructed upon and above a portion of the fifth floor level of the Central Pedestal and the East Pedestal, spanning a portion of the space between the Central Pedestal and East Pedestal, and located upon and structurally supported in part by the Central Pedestal and East Pedestal (the "East Tower");

1.5.1.2 East Pedestal. The first floor of the East Pedestal is intended to house, among other things, elevator facilities connecting to the front desk and main check-in facilities for guests of the East Tower and the West Tower. The first floor of the East Pedestal will also contain a restaurant, bar/lounges and retail facilities (the "Restaurant and Retail Facilities"). The second floor of the East Pedestal will contain business center, conference and banquet facilities (the "Business Center, Conference and Banquet Facilities"). The third floor of the East Pedestal will contain the hotel lobby, with restaurant, living room, lounges, terrace and retail facilities (collectively, the "Hotel Lobby"), and a health spa (the "Health Spa"). The fifth floor of the East Pedestal consists of open-air terraces on which will be constructed a combination of sun decks and swimming pools, changing rooms, fitness center, cabanas and a pool bar and food and beverage outlets (the "Pool Deck and Terrace Facilities"). The East Pedestal will also have a multi-story Atrium ("Atrium") and will also house various administrative and back-of-the-house facilities;

1.5.1.3 Central Pedestal. It is intended that the first floor of the Central Pedestal will be occupied in part by retail uses and a retail gallery (the "Retail Gallery") and a condominium lobby area and additional elevators (collectively, the "Lobby") that will provide access to the West Tower. The second, third and fourth floors of the Central Pedestal will contain parking and will also house various administrative and back-of-the-house facilities. The fifth floor of the Central Pedestal shall also contain a portion of the Shared Facilities Unit of the Condominium Property and open-air facilities and landscaping which are a part of the Adjoining Parcel;

1.5.1.4 West Pedestal. The first through fourth floors of the West Pedestal will contain parking. The fifth floor of the West Pedestal will contain a portion of the Shared Facilities Unit which may contain, among other improvements, a sun deck, swimming pool, whirlpool, restrooms, cabanas, and terraces;

1.5.1.5 Parking areas, ramps and/or driveways will also be constructed in the West Pedestal and Central Pedestal, in the below ground level of all Pedestals, and on the ground level of the Adjoining Parcel.

1.5.2. Please refer to Section 2.1.2 and Section 6 herein for additional information regarding the access and use rights Hotel Condominium Unit Owners will have to the Adjoining Parcel and improvements therein such as the Restaurants and Retail Facilities, Business Center, Conference and Banquet Facilities, Hotel Lobby and Lobby, Health Spa, Atrium, Pool Deck and Terrace Facilities, Retail Gallery and Garage.

1.5.3. As to all improvements not now constructed, no representations or warranties are made that any of such improvements will be constructed or that they will be constructed in the manner now contemplated or depicted.

1.6 The Fort Lauderdale Residences Hotel Condominium Association, Inc.

1.6.1. The Condominium will be operated by the Fort Lauderdale Residences Hotel Condominium Association, Inc., a Florida not for profit corporation, or other similarly named Florida not for profit corporation, organized by the Developer under Chapter 617, Florida Statutes (the "Association"). The Association will be established when the Articles of Incorporation of the Association (the "Articles") are filed with the Florida Secretary of State. A copy of the Articles is attached as Exhibit E to the Declaration. The Articles of the Association, which set forth the purposes and powers of the Association, establish a Board of Directors (the "Board"). The Board will be responsible for managing the affairs of the Association in accordance with the adopted Bylaws of the Association, as such may be amended from time to time (the "Bylaws"). A copy of the Bylaws of the Association is attached as Exhibit F to the Declaration.

DEVELOPER HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.

1.6.2. The initial officers and directors of the Association are or will all be designees of the Developer. With respect to the control of the Association, see Section 718.301, Florida Statutes, and Section 5 of the Bylaws of the Association, a copy of which Bylaws is set forth as Exhibit F to the Declaration. The Directors of the Association designated by the Developer will be replaced by Directors elected by the Unit Owners (other than the Developer) no later than is required by the applicable provisions of the Act.

1.6.3. By virtue of owning a Unit, each Hotel Condominium Unit Owner and the Shared Facilities Unit Owner becomes a member of the Association as provided in the Articles and Bylaws. Section 5 of the Declaration provides that each Hotel Condominium Unit, whether there are one (1) or more owners of a Hotel Condominium Unit, is entitled to cast one (1) vote in matters that come before the Association. The Declaration also provides that the Shared Facilities Unit Owner is entitled to cast seventy-one (71) votes in matters that come before the Association.

1.7 Utilities and Certain Services

Developer has provided for the availability of various utility and certain other services required for the Condominium as follows:

Electricity	Florida Power & Light
Telephone	Bell South or other regulated service provider
Water	City of Fort Lauderdale Department of Public Services
Sanitary Sewage and Waste Disposal	City of Fort Lauderdale Department of Public Services
Solid Waste Removal	Private Contractor(s) not yet determined
Storm Drainage	Private system of natural and artificial percolation and run-off municipal system
Cable/Satellite Television	Private Contractor not yet determined

SECTION 2. DISCUSSION OF CONDOMINIUM DOCUMENTS AND RESTRICTIONS CONTAINED THEREIN

This Section of the Prospectus is devoted to a discussion of the referenced condominium documents for the Condominium (such condominium documents shall include the Restrictions and Easements Agreement unless the context requires otherwise, together with this Prospectus are collectively referred to as the "Condominium Documents") and attempts to highlight certain points contained within these documents. This Section, however, is not intended to and should not serve as a substitute for reading all the Condominium Documents.

2.1 Declaration and Restrictions Contained Therein

The Declaration is the document that, when recorded in the public records of Broward County, Florida, will subject the Condominium Property to the condominium form of ownership. The proposed Declaration

is attached as Exhibit 1. The Declaration will be recorded in the public records following the completion of construction of the Condominium. The Declaration has no stated length of term and can be terminated as set forth in Section 19 thereof. Sections 2.1.1 through 2.1.7 below summarize certain restrictions, rights and obligations contained in the Declaration, attached as Exhibit 1 to this Prospectus.

2.1.1. Share of Common Elements, Common Expenses and Common Surplus.

2.1.1.1 Unit Owners will own a respective undivided interest in the Common Elements and Common Surplus of the Condominium (expressed as a percentage share) and will be obligated for an identical percentage share of the Common Expenses, said percentage shares being set forth on Exhibit "D" to the Declaration. The Common Expenses include all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the Bylaws. Common Expenses shall also include, without limitation: (i) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended, (ii) the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property and/or rental or other expenses owed in connection with any Units leased by the Association, (iii) if applicable, insurance for directors and officers, and (iv) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure. Common Expenses shall not include any separate obligations of individual Unit Owners. Please refer to Sections 10 and 11 of the Declaration.

2.1.1.2 Each Unit's percentage share of ownership of the Common Elements, percentage share of Common Surplus to which each Unit is entitled and the percentage share of Common Expenses which each Unit Owner will bear was devised by dividing the approximate area (in square feet) for each Unit by the total approximate area (in square feet) of all Units in the Condominium. For the purpose of determining each Unit's percentage share of costs and expenses, the approximate area of each Hotel Condominium Unit was determined by measuring to the interior face of the unfinished surface of the exterior perimeter walls and to the interior face of the unfinished surface of the interior perimeter walls of each Hotel Condominium Unit. The approximate area of the Shared Facilities Unit was calculated by taking the total square footage of the West Tower (measured from the exterior face from all exterior walls, balconies and terrace slabs) less the square footage of the Hotel Condominium Units. All percentage shares for the Units were then adjusted to assure that they equal precisely one hundred percent (100%).

2.1.1.3 In addition to the Assessments payable to the Association, each Hotel Condominium Unit Owner shall be obligated for payment of sums to the Shared Facilities Unit Owner for the Shared Facilities Unit Owner's share of the Common Expenses and for use and enjoyment of the Shared Components according to proportionate shares set forth in Exhibit "H" to the Declaration in a manner parallel to the payment of Common Expenses. See Section 12 of the Declaration and Section 4.4 of this Prospectus for a further description of the payment of these sums.

2.1.2. Certain Easements

2.1.2.1 In accordance with the requirements of the Act and as set forth in Section 3.4 of the Declaration, Unit Owners shall have the perpetual nonexclusive right to use parts of the interior hallways, elevators and stairwells and other Shared Components of the Condominium, and, as set forth in the Declaration of Restrictions and Easements Agreement, (the "Restrictions and Easements Agreement") described in Section 6 of this Prospectus, the driveways, exterior walks and internal pedestrian accessways of the Adjoining Parcel, if, as and when (and subject to the terms of) the Declaration and the Restrictions and Easements Agreement are recorded, so as to provide a means of ingress to and egress from the Condominium Property to public streets. The cost of maintaining the Shared Components of the Condominium, including any lighting, landscaping, security and transportation systems, shall be allocated among and borne by the Hotel Condominium Unit Owners as a part of the monthly charges levied by the Shared Facilities Unit Owner and are considered Shared Costs. A percentage allocation of the Adjoining Parcel Owner's cost of maintaining driveways, exterior walks and internal pedestrian accessways of the Adjoining Parcel, including any lighting, landscaping, parking, security and transportation systems, as well as other portions of the Adjoining Parcel for which easements or use rights have been provided to the Hotel Condominium Unit Owners, shall be allocated among and borne by the Hotel Condominium Unit Owners as a part of the monthly charges (the "Adjoining Parcel Costs") and Access Fees levied by the Adjoining Parcel Owner from time to time as further described in the Restrictions and Easements Agreement.

2.1.2.2 Certain easements and use rights also will be established pursuant to Section 3.4 of the Declaration over the Shared Components of the Condominium for the maintenance, installation and repair of facilities and systems, including utilities and other services. In addition, the Condominium Property will be subject to easements for encroachments and support. Developer has reserved unto itself the right to impose upon the Shared Components and Common Elements of the Condominium Property easements and cross-easements as the Developer, as the case may be, deems to be in the best interest of the Condominium Property or for the general health, safety and welfare of the Unit Owners or for carrying out the purpose of the Declaration. (See Section 3.4 of the Declaration attached as Exhibit 1 to this Prospectus.)

2.1.2.3 Developer also has reserved a temporary easement, for itself and its successors and assigns, if any, to use all or part of the Condominium Property (excluding any Hotel Condominium Unit acquired by a purchaser) for any business purpose necessary or desirable to consummate the sale, lease or encumbrance of unsold Units, as well as the right to conduct inspections and tests on the Condominium Property, as more particularly described in Section 3.4 of the Declaration, Exhibit 1 of this Prospectus.

2.1.2.4 Also see Section 6 of this Prospectus for a discussion about other easements that affect the Condominium Property.

2.1.3. Occupancy and Use Restrictions

Section 16 of the Declaration contains restrictions on the use of the Condominium Property, some of the principal provisions of which are summarized below. The following is not a complete summary of all the restrictions contained in the Condominium Documents. For the complete text of these and other specific restrictions upon the use of Hotel Condominium Units, the Common Elements and the Shared Components, please refer to all Exhibits contained in this Prospectus (particularly Exhibit 1 and Exhibit 3) in addition to the specific references mentioned.

2.1.3.1 Zoning. The Condominium Property is located in a zoning district of the City of Fort Lauderdale ("City"), which requires transient occupancy and, as such, the Condominium Property shall be operated continuously as a public lodging establishment/transient facility. In addition, the City's zoning code requires certain facilities and/or services be made available to occupants, including, for example, daily room cleaning service, and each Hotel Condominium Unit must be serviced by a central switchboard telephone system. The City's zoning code also permits various accessory uses typical of a resort hotel operation, and, therefore, the Adjoining Parcel may include, dining rooms, restaurants, nightclubs, bars, retail stores, personal service shops, patio bars, and outdoor food service bars. Accordingly, each Hotel Condominium Unit shall be used for transient occupancy only, and should not be used by any Hotel Condominium Unit Owner or occupant as their sole residence or permanent residence. Each Hotel Condominium Unit Owner shall comply with all laws relating to public lodging establishments, including all applicable State, County and City laws relating to transient occupancy, as determined by the Adjoining Parcel Owner in its absolute discretion. Each Hotel Condominium Unit Owner, by acceptance of the Deed, designates the Adjoining Parcel Owner as its irrevocable agent and attorney-in-fact coupled with an interest to have the right, but not the obligation, to ensure the Condominium Property's compliance with all applicable laws restricting the use of the Hotel Condominium Units to transient occupancy, including, at the absolute discretion of the Adjoining Parcel Owner, the Adjoining Parcel Owner's obtaining any and all necessary licenses at the sole cost of each Hotel Condominium Unit Owner and as part of the Shared Cost. To the extent applicable zoning laws permit more non-transient use of the Hotel Condominium Units, then the Declaration is deemed to be automatically modified to permit such additional non-transient use. (See section 16.1 of the Declaration.) Notwithstanding the foregoing, Units owned by the Developer may be used for other non-residential uses in connection with the development of the Condominium Property and sale and lease of the Hotel Condominium Units. At the Closing of the Hotel Condominium Unit and at anytime within ten (10) days of the request of the Adjoining Parcel Owner, a Hotel Condominium Unit Owner shall execute any irrevocable or other power of attorney coupled with interest if necessary or desirable as determined in the Adjoining Parcel Owner's absolute discretion so that the powers granted under Section 16.1 of the Declaration may be exercised. Notwithstanding the power of attorney granted under Section 16.1 of the Declaration, it is the Hotel Condominium Unit Owner's absolute obligation to comply with and to ensure that the Hotel Condominium Unit and the use thereof comply with all laws, ordinances, rules, and regulations promulgated by any governmental agency having jurisdiction.

2.1.3.2 Use of Shared Facilities Unit. The Shared Facilities Unit may be used for any lawful purpose, and may be used by the owner thereof and its guests, tenants and invitees. The rights of Hotel Condominium Unit Owners to use the Shared Facilities Unit shall be limited to the extent granted in, and subject to the restrictions and the obligation for payment of the Shared Costs as set forth in, the Declaration. It is contemplated (but without creating an obligation whatsoever) that in addition to use as a typical hallway for pedestrian passage by the Hotel Condominium Unit Owners, portions of the Shared Facilities Unit will be utilized by the Shared Facilities Unit Owner in such a manner as to provide hotel and other services to the Condominium Property, which may include (again without obligation, and without limitation) maid and housekeeping daily cleaning services, room service, and personal services, etc. (See Section 2.1.3.5 below.)

2.1.3.3 Children. Children are permitted to reside in the Hotel Condominium Units. However, children under the age of twelve (12) are required to be accompanied by a responsible adult when in certain areas of the Common Elements or Shared Components of the Condominium and in public areas of the Adjoining Parcel. For more information about children, please see Section 16 of the Declaration attached as Exhibit 1 to this Prospectus.

2.1.3.4 Pet Restrictions. Domesticated dogs and/or cats may be maintained in a Hotel Condominium Unit provided: (i) no more than two (2) in total of any combination of dogs and/or cats are maintained in a single Hotel Condominium Unit; (ii) such pets are permitted to be so kept by applicable laws and regulations; (iii) such pets are not left unattended on terraces, balconies or in lanai areas; (iv) such pets are not a nuisance to occupants or owners of other Units; (v) such pets are not a breed considered to be dangerous by either the Adjoining Parcel Owner, Shared Facilities Unit Owner or the Association; and (vi) such pets do not weigh more than permitted as provided in the Rules and Regulations, attached as part of Exhibit "F" to the Declaration attached as Exhibit 1 to this Prospectus. Neither the Adjoining Parcel Owner, Shared Facilities Unit Owner nor Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing. Each Hotel Condominium Unit Owner, tenant or guest that violates this matter shall be required to fully indemnify, defend and hold harmless the Association, Developer, Shared Facilities Unit Owner, Adjoining Parcel Owner and other Hotel Condominium Unit Owners in such regard to the full extent permitted by law. Notwithstanding the foregoing, however, in the event that a first-time Unit Owner purchasing from the Developer has more than two pets at the time of execution of the Real Estate Purchase Agreement for the Hotel Condominium Unit, the consent of the Association shall not be required and the Unit Owner may keep said excess pet or pets within the confines of the Unit subject, however, to the prior written approval of the Developer and to all other rules and/or regulations in effect at the time pertaining to pets, until the death of that pet. Thereafter, if the Unit Owner desires to adopt a new

pet, said Unit Owner shall be required to comply with all rules and regulations then in effect with regard to pets including without limitation the number of pets which may be maintained within a Hotel Condominium Unit.

2.1.3.5 Hotel Related Services. The Adjoining Parcel Owner has the exclusive right (but not the obligation) to provide hotel services to the Condominium Property including those hotel related services required to be made available pursuant to the City's Zoning Code, including, but not limited to, solicitation and/or provision of maid and housekeeping daily cleaning services, central telephone switchboard, computer hook-ups, telecommunications services, including without limitation cable/satellite television, movie and wireless access service all as part of an integrated hotel system, twenty-four (24) hour front desk services, concierge, personal services (i.e., massage, personal training, dry cleaning, pet care services, etc.) and/or room service or food and beverage service. The Adjoining Parcel Owner is provided with non-exclusive easements upon the Shared Facilities Unit to provide such services, and each Hotel Condominium Unit Owner acknowledges and agrees he will be obligated to pay the Adjoining Parcel Owner and/or the Adjoining Parcel Owner's designees (including the Hotel Flag) fees for each such service provided.

2.1.3.6 Alterations. No Hotel Condominium Unit Owner shall cause or allow improvements or changes to any Hotel Condominium Unit, Common Elements, Association Property, or Shared Components of the Shared Facilities Unit, including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the West Tower or the exterior of said Hotel Condominium Unit, without obtaining the prior written consent of the Association and Shared Facilities Unit Owner. For example, curtains or drapes (or linings thereof) which face the exterior windows or glass doors of Hotel Condominium Units shall comply with the color standard established by the Shared Facilities Unit Owner, in its exclusive discretion, and shall be approved in writing prior to installation, and all unapproved curtains or drapes shall be promptly removed and replaced with acceptable items, upon notice from the Shared Facilities Unit Owner.

2.1.3.7 Nuisances. No nuisances (as defined by the Association and/or the Shared Facilities Unit Owner) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Hotel Condominium Units or which interferes with the peaceful possession or proper use of the Condominium Property by its occupants or owners. No activity specifically permitted by the Declaration or by the Restrictions and Easements Agreement, including, without limitation, reasonable activities or businesses conducted from the Shared Facilities Unit, shall be deemed a nuisance.

2.1.3.8 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over same shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction over same, relating to any portion of the Condominium Property, shall be corrected by, and except as may be otherwise provided in the Condominium Documents, at the sole expense of the Owner of the Unit or other person obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. No activity specifically permitted by the Declaration or by the Restrictions and Easements Agreement shall be deemed to be a violation of this provision.

2.1.3.9 Weight and Sound Restrictions. Hard and/or heavy surface floor coverings, including, without limitation, tile or wood, may not be installed in any part of a Hotel Condominium Unit other than the kitchen and bathroom(s), unless same meets or exceeds the sound installation parameters established from time to time by the Shared Facilities Unit Owner and the prior written consent of the Shared Facilities Unit Owner is obtained. The installation of insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the building structure, whether of the concrete sub floor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and must be installed prior to the Hotel Condominium Unit being occupied. Notwithstanding the foregoing, the floor coverings (and insulation and adhesive material therefor) installed on any balcony or terrace shall comply with the requirements established by the Shared Facilities Unit Owner, in its absolute discretion, and the Hotel Condominium Unit Owner shall obtain written approval from the Shared Facilities Unit Owner before installing any floor covering on any balcony or terrace. The installation of any improvement or heavy object must be submitted to and approved by the Shared Facilities Unit Owner, and must be compatible with the overall structural design of the building. The Shared Facilities Unit Owner may require a structural engineer to review certain of the proposed improvements, with such review to be at the Hotel Condominium Unit Owner's sole expense. Hotel Condominium Unit Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Shared Facilities Unit Owner has the right to require immediate removal of items in violation. Each Hotel Condominium Unit Owner acknowledges and agrees that sound transmission in a high-rise building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and or mechanical equipment can often be heard within another Hotel Condominium Unit. The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Hotel Condominium Unit Owner waives and expressly releases the Developer from any such warranty and claim for loss or damages resulting from sound transmission.

2.1.3.10 Association and Shared Facilities Unit Owner Access to Hotel Condominium Units. In order to facilitate access to Hotel Condominium Units by the Association and/or the Shared Facilities Unit Owner, all Hotel Condominium Unit Owners must deliver a set of keys (or access card or code, as may be applicable) for their respective Hotel Condominium Units to the Association and to the Shared Facilities Unit Owner to use in the performance of their functions. No Hotel Condominium Unit Owner may change the locks or codes, as applicable, to his Hotel Condominium Unit without so notifying the Association and the Shared Facilities Unit Owner and delivering to the Association and to the Shared Facilities Unit Owner a new set of keys (or access card or code, as may be applicable) for such Hotel Condominium Unit. Further, the Adjoining Parcel Owner and the Shared Facilities Unit Owner shall have the right to adopt reasonable regulations from time to time regarding access control

and check-in and check-out procedures, which shall be applicable to both hotel guests and Hotel Condominium Unit Owners and their family members, tenants, guests, invitees and other occupants.

2.1.3.11 Antennas, Satellite Dishes. To the extent such limitation is permitted by applicable law, no Hotel Condominium Unit Owner may install any antenna, satellite dish or other transmitting or receiving apparatus in or upon his or her Hotel Condominium Unit (and/or areas appurtenant thereto), without the prior written consent of the Shared Facilities Unit Owner.

2.1.3.12 Parking. All vehicle parking for Hotel Condominium Unit Owners shall be located upon the Adjoining Parcel and shall be by valet or self-parking or a combination thereof, as determined from time to time in the exclusive discretion of the Adjoining Parcel Owner, and such self parking shall be in areas designated by the Adjoining Parcel Owner. All parking shall be subject to the procedures, rules and regulations adopted from time to time pursuant to the Restrictions and Easements Agreement described in Section 6 of this Prospectus. The Restrictions and Easements Agreement authorizes the Adjoining Parcel Owner to provide the valet service and to impose a fee for such service for all cars. The cost of the valet service will be allocated between the Adjoining Parcel Owner and the Hotel Condominium Unit Owners as determined by the Adjoining Parcel Owner in its absolute discretion, and the portion allocated to the Hotel Condominium Unit Owners for valet service for one hundred seventy-one (171) cars shall be included in the Adjoining Parcel Costs established by the Adjoining Parcel Owner under the Restrictions and Easements Agreement. Similarly, the cost of maintaining the parking garage and establishing reserves for repairs and improvements to the parking garage will be allocated between the Hotel Condominium Units and the Adjoining Parcel in the absolute discretion of the Adjoining Parcel Owner, and the amount allocated to the Hotel Condominium Units shall be included in the Adjoining Parcel Costs established by the Adjoining Parcel Owner. Subject to the availability of additional parking spaces, all additional cars shall pay valet charges for parking as determined by the Adjoining Parcel Owner, in its absolute discretion. Unless expressly granted advance permission by the Adjoining Parcel Owner or by the applicable rules and regulations of the Adjoining Parcel Owner, no motor homes, trailers, boats, campers, trucks larger than one ton, or vans or trucks used for commercial purposes or having substantially oversized tires, or vehicles that cannot be accommodated due to height, width or length limitations, shall be permitted to be parked or stored in the Garage that is the subject of the Restrictions and Easements Agreement.

2.1.3.13 Storage on Balconies/Terraces. No equipment, materials or other items may be kept or stored on any balcony or terrace area of the West Tower, including but not limited to towels, clothing and bicycles. Hotel Condominium Unit occupants may, however, place and use patio-type furniture, planters and other items in such areas if same are normally and customarily used for a residential balcony or terrace area, but all such patio furniture, planters and others must be reasonably acceptable to the Shared Facilities Unit Owner and any third party manager acting on behalf of the Shared Facilities Unit Owner. In the event of any doubt or dispute as to whether a particular item is permitted, the decision of the Shared Facilities Unit Owner shall be final and dispositive.

2.1.3.14 No Hotel Condominium Unit Owner shall install, within his or her Unit, or upon the Shared Facilities Unit, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture, and or shelving in a Hotel Condominium Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Hotel Condominium Unit Owners, whether or not occupying the Hotel Condominium Unit, shall periodically run the air conditioning system to minimize humidity in the Hotel Condominium Unit. While the foregoing are intended to minimize the potential development of molds and other mycotoxins, each Hotel Condominium Unit Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. The Developer does not make any representations or warranties regarding the existence or development of molds or mycotoxins and each Hotel Condominium Unit Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. Further, given the climate and humid conditions in South Florida, molds and fungus may exist and/or develop within the Condominium Property. Each Hotel Condominium Unit Owner is hereby advised that certain molds may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By closing, each Hotel Condominium Unit Owner shall be deemed to have assumed the risks associated with molds and/or fungi and to have released the Developer from any and all liability resulting from same.

2.1.3.15 Developer and Hotel Flag (and/or their affiliates) may enter into or have entered into certain agreements that permit Developer, while such agreements are in effect, to use a trade name, trademark and/or proprietary rights of Hotel Flag in connection with the initial sale and marketing of the Condominium and Adjoining Parcel and which may provide for Hotel Flag and/or its affiliates to manage the Condominium and/or the Adjoining Parcel. The Declaration provides in Section 16.17 that the Hotel Condominium Unit Owner acknowledges and agrees to certain agreements between the Hotel Flag and the Developer by virtue of accepting the deed to the Hotel Condominium Unit. Refer to that provision for further details.

The foregoing is not a complete summary of all of the restrictions contained in the Condominium Documents. For a complete text of these and other specific restrictions upon the Condominium Property, please refer to all Exhibits contained in this Prospectus.

THE SALE, LEASE OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.

2.1.4. Sale, Lease or Transfer of Units

2.1.4.1 A Hotel Condominium Unit Owner may sell his or her Hotel Condominium Unit at any time. The following is intended only as a summary. Please refer to Sections 16 and 17 of the Declaration for more information.

2.1.4.2 To comply with applicable zoning, it is intended that the Hotel Condominium Units, together with the units in the Adjoining Parcel, will be advertised and held out to the public as a hotel regularly rented to guests on a transient basis (including, as frequently as daily). Although there is no minimum or maximum number of times per year that a Hotel Condominium Unit must be leased, the lease term must be consistent with transient use. Each tenant or occupant shall comply with the covenants, terms, conditions and restrictions of the Declaration (and all Exhibits thereto) and with any and all rules and regulations adopted by either the Shared Facilities Unit Owner, Association and/or the Adjoining Parcel Owner from time to time, including, without limitation, any and all regulations and/or procedures adopted by the Shared Facilities Unit Owner and the Adjoining Parcel Owner regarding check-in for Hotel Condominium Unit Owners (and other occupants including without limitation tenants), and other matters reasonably necessary to comply with applicable laws governing the use of the Hotel Condominium Units. The Hotel Condominium Unit Owner will be jointly and severally liable with the tenant to the Association, the Shared Facilities Unit Owner, and/or the Adjoining Parcel Owner for any amount which is required by the Association, the Shared Facilities Unit Owner and/or the Adjoining Parcel Owner to repair any damage to the Common Elements, Shared Components and/or the Adjoining Parcel resulting from acts or omissions of tenants as determined in the sole discretion of the Association as to Common Elements, or of the Shared Facilities Unit Owner as to the Shared Facilities Unit or the Shared Components, or of the Adjoining Parcel Owner as to the Adjoining Parcel and to pay any claim for injury or damage to property caused by the negligence of the tenant, and special charges may be levied against the Hotel Condominium Unit therefor. All tenancies are subordinate to any lien filed by the Association or the Shared Facilities Unit Owner or the Adjoining Parcel Owner, whether prior or subsequent to such lease.

2.1.4.3 A Hotel Condominium Unit Owner may rent his Hotel Condominium Unit by whatever means, including by his own advertising, utilizing the rental services of an independent rental management company, such as a licensed real estate broker, or by participating (in his sole discretion) in a rental arrangement if same is provided by the Adjoining Parcel Owner; provided, however, that (in addition to, and without limitation of the restrictions set out in the Declaration, including, without limitation, in Sections 16.1, 16.17 and 17), no Hotel Condominium Unit Owner may (a) identify or affiliate his Hotel Condominium Unit with the brand name of any person or entity other than the brand name (if any) by which Adjoining Parcel is identified, (b) permit any person or entity other than Hotel Flag to utilize the trade name or trademarks of Hotel Flag in connection with the advertisement or promotion of any rental of his Hotel Condominium Unit or (c) permit his Hotel Condominium Unit to be advertised or promoted through or otherwise affiliated with, any reservation system or network by whatever means (e.g., Internet, electronic or otherwise) that identifies or otherwise represents the Hotel Condominium Unit as being part of an integrated hotel operation (as distinct from a transient rental of a privately owned unit), unless such advertisement, promotion or reservation system or network is operated by Adjoining Parcel Owner or its designee. By acceptance of a deed or other transfer of a Hotel Condominium Unit, each Hotel Condominium Unit Owner hereby agrees to lease his or her Hotel Condominium Unit, if at all, in a manner that complies with all applicable law, including without limitation, the zoning requirements of the City.

2.1.5. Obligation of Maintenance and Repair

The obligation of maintenance and repair of the Condominium Property is either that of the Association, the Shared Facilities Unit Owner or of the Hotel Condominium Unit Owners, as set forth in Sections 3, 7, 9 and 12 of the Declaration, as well as other Sections therein. For example, the roof of the West Tower, which is part of the Shared Facilities Unit and the maintenance of which is to be provided by the Shared Facilities Unit Owner, shall not be repaired or modified by any Hotel Condominium Unit Owner (without prior approval of the Shared Facilities Unit Owner, and, if applicable, the Developer), but rather shall be repaired or modified as appropriate by the Shared Facilities Unit Owner, with the cost thereof being included in the charges paid by Hotel Condominium Unit Owners as part of the Shared Costs.

The Declaration further provides that a Hotel Condominium Unit Owner is responsible to maintain in good condition and to repair and replace at his or her expense all portions of his or her Hotel Condominium Unit and is not to make any alteration or repair that would jeopardize or impair the safety or soundness of the Condominium Property, including without limitation, the Common Elements and the Shared Components, or the architectural design of the West Tower. Plumbing and electrical repairs within a Hotel Condominium Unit are the financial obligation of the Hotel Condominium Unit Owner, as are interior surfaces of the Hotel Condominium Unit. The external surfaces of all exterior apertures, such as exterior doors, skylights and windows (including exterior window sills and window frames) of a Hotel Condominium Unit, are part of the Shared Facilities Unit, and are, therefore, maintained by the Shared Facilities Unit Owner, with the cost thereof being included in the charges paid by Hotel Condominium Unit Owners.

The Association is responsible for the maintenance, repair and replacement of all of the Common Elements and Association Property, while the Shared Facilities Unit Owner is responsible for the maintenance, repair and replacement of all of the Shared Components, including without limitation the exterior surfaces of the West Tower. Such obligation, with regard to the Shared Components, shall be exclusively funded from the charges to Hotel Condominium Unit Owners for the use of the Shared Components. Obligations of maintenance by the Association, Shared Facilities Unit Owner and Hotel Condominium Unit Owners are set forth in various provisions of the Declaration, including but not limited to, Sections 3, 7, 9 and 12 therein.

2.1.6. Insurance

2.1.6.1 The Shared Facilities Unit Owner is obligated to purchase liability and casualty insurance for the purpose of providing liability and casualty insurance coverage for the Shared Components, as set forth in Section 13 of the Declaration, which coverage may be satisfied by a joint policy with the Adjoining Parcel Owner. Certain coverage, as discussed below, in addition to that provided by the Shared Facilities Unit Owner, shall, however, be the responsibility of the Hotel Condominium Unit Owner.

2.1.6.2 In the event the insurance proceeds are not available or are insufficient to cover a loss to any improvements within any of the Hotel Condominium Units and/or improvements within the Shared Facilities Unit, including the Shared Components, the Hotel Condominium Unit Owners shall be responsible for the deficiency in the manner set forth in Section 13 of the Declaration. Each Hotel Condominium Unit Owner shall be responsible for purchasing, and shall purchase, casualty insurance to provide coverage in such event. Each Hotel Condominium Unit Owner is also responsible for the purchase of, and shall purchase, casualty insurance, including water damage, for any personal property or improvements in his or her Hotel Condominium Unit, including, but not limited to, floor coverings, wall coverings and ceiling coverings and the following equipment, if any, located within his or her Hotel Condominium Unit: electrical fixtures, appliances, air conditioning or heating equipment, water heaters and built-in cabinets. In addition, each Hotel Condominium Unit Owner is responsible for purchasing, and shall purchase, insurance against liability for the acts or omissions of the Association in relation to the use of the Common Elements (which liability may be imposed pursuant to Section 718.119 of the Act) and insurance against liability for acts or omission of the Shared Facilities Unit Owner in relation to the use of the Shared Components. Finally, each Hotel Condominium Unit Owner shall be responsible for purchasing, and shall purchase, liability insurance for accidents occurring in his or her own Hotel Condominium Unit or for accidents or damages for which the Hotel Condominium Unit Owner is liable, including, without limitation, water damage to other Hotel Condominium Units or the Common Elements, the Shared Facilities Unit (Shared Components) or the Adjoining Parcel caused by his or her act or failure to act, and for any additional liability insurance the Hotel Condominium Unit Owner so desires.

2.1.6.3 Each Hotel Condominium Unit Owner should contact his or her insurance agent to determine the extent such personal coverage is advisable in addition to the coverage provided by the Shared Facilities Unit Owner. Please refer to Section 13 of the Declaration for further details.

2.1.7. Right of Developer to Lease Hotel Condominium Units and Other Rights

THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.

2.1.7.1 The Developer reserves the right to rent or lease unsold Hotel Condominium Units upon such terms as Developer shall approve and as permitted by the Act and the rules promulgated thereunder. In the event any Hotel Condominium Unit is sold prior to the expiration of the term of a lease (which may occur during an indefinite period), title to such Hotel Condominium Unit (or Units) will be conveyed subject to the lease (or leases) and Hotel Condominium Unit Owners will succeed to the interests of the applicable lessor. If any Hotel Condominium Unit is sold subject to a lease, a copy of the executed lease will be attached to the Purchase Agreement. If a Hotel Condominium Unit has been previously occupied, the Developer will, to the extent required by law, so advise a prospective Hotel Condominium Unit Owner, in writing, prior to the time that the prospective Hotel Condominium Unit Owner is requested to execute a Purchase Agreement. See Section 17 of the Declaration for further details.

2.1.7.2 Developer has also reserved the right in Section 16 of the Declaration to transact on the Condominium Property, including within unsold Hotel Condominium Units and the Shared Facilities Unit, all business necessary to consummate the sale and/or lease of Hotel Condominium Units, as well as any other projects it or its affiliates may develop, including, but not limited to, the right to maintain models, place signs and banners, have employees in the area, use the Common Elements and Shared Facilities Unit, and show Hotel Condominium Units. There are other provisions in the Condominium Documents giving certain rights to Developer, such as selection of members of the Board (see Section 5 of the Bylaws), allowing approval of certain actions of the Association (e.g., see Section 9 of the Declaration), and a limited right to amend the Declaration (see Section 6.4 of the Declaration).

2.2 Articles of Incorporation of the Association

The Association will operate the Condominium. The Association shall be a Florida corporation not for profit, organized or to be organized under Chapter 617, Florida Statutes. The Articles of the Association, Exhibit E to the Declaration have been or will be filed with the Florida Secretary of State. They set forth the purposes and powers of the Association and evidence that the membership of the Association will be comprised of the Shared Facilities Unit Owner and Hotel Condominium Unit Owners.

2.3 Bylaws of the Association

The Bylaws of the Association, Exhibit F to the Declaration, specifically detail the procedures adopted for the regulation and management of the Association. For example, the Bylaws describe how and when the meetings of the members and the meetings of the Board are held, the powers and duties of the Directors and the Officers of the Association and the qualifications for membership on the Board and for the election of the Directors. The Bylaws also set forth the items that make up the proposed yearly operating budget of the Association ("Budget") and provide for a procedure for the preparation and approval of the Budget. For a discussion as to the allocation of the Common Expenses of the Association among Unit Owners, see Section 4.3 of this Prospectus. Each member (or members collectively if a Hotel Condominium Unit is owned by more than one (1) Hotel Condominium Unit Owner) is entitled to cast one (1) vote for each Hotel Condominium Unit owned by that member or members, as the case may be, and the Shared Facilities Unit Owner is entitled to cast seventy-one (71) votes on behalf of the Shared Facilities Unit.

The Bylaws also provide that Unit Owners in the Condominium other than Developer shall be entitled to elect a majority of the Board upon the happening of any one of the events set forth in Section 5 of the

Bylaws. These provisions are designed to assure Members representation on the Board and to provide a method for the ultimate control of the Association by members other than the Developer.

2.4 Miscellaneous Documents

Other Condominium Documents, including those attached as Exhibits to this Prospectus and not directly discussed in this Prospectus include: (a) Reservation Deposit Escrow Agreement and Escrow Agreement, which provide the procedures for holding deposits of prospective and actual Hotel Condominium Unit Owners of Hotel Condominium Units by the Escrow Agent (as defined therein), in accordance with their terms (Exhibit 5A and Exhibit 5B); (b) Receipts for Condominium Documents used in conjunction with delivery of this Prospectus (Exhibit 6); (c) Evidence of Developer's Ownership of the Land Upon Which the Condominium Will Be Built (Exhibit 8); and (d) Frequently Asked Questions and Answers Sheet (Exhibit 9).

SECTION 3. DESCRIPTION OF UNITS AND FACILITIES FOR COMMON USE

3.1 Information Regarding Units

The configuration and alphanumerical designation for each Unit in the Condominium can be determined from the Declaration including the floor plans and the Survey that are attached as Exhibit C to the Declaration.

3.2 Facilities Comprising the Common Elements of the Condominium and certain Condominium Recreational Facilities within portions of the Shared Components of the Shared Facilities Unit

DEVELOPER RESERVES THE RIGHT TO ELIMINATE, EXPAND OR ADD ANY OF THE PROPOSED FACILITIES PRIOR TO COMPLETION OF CONSTRUCTION.

3.2.1. As determined by Section 2.11 of the Declaration, the Common Elements within the Condominium generally consist of those portions of the Condominium Property that are not included within any Hotel Condominium Unit or the Shared Facilities Unit, as well as certain use rights granted in certain facilities in the Adjoining Parcel pursuant to the Restrictions and Easements Agreement described in Section 6 of this Prospectus.

3.2.2. The Condominium has been established in such a manner as to minimize the Common Elements. Most components that are typically "common elements" of a condominium have instead been designated in the Declaration as part of the Shared Components of the Shared Facilities Unit.

3.2.3. The Common Elements, as well as the Shared Components, will be substantially completed and available for use at the same time the Condominium is estimated to be constructed by the Developer, except as otherwise provided to the contrary in this Prospectus, in the proposed Purchase Agreement attached as Exhibit 4 to this Prospectus and in the executed Purchase Agreement between Developer and any Hotel Condominium Unit Owner, subject to matters outside of Developer's control. When completed, such facilities will be available for the exclusive use of or benefit of the Hotel Condominium Unit Owners, members of their families, tenants, guests and invitees, and their family members and guests, and the Shared Facilities Unit Owner and its invitees.

3.2.4. No recreational facilities are intended to be constructed on the Common Elements, but the following condominium recreational facilities are intended to be constructed within the Shared Facilities Unit and included within the Shared Components. All of these facilities are to be located on the open-air fifth floor of the West Pedestal.

3.2.4.1 A heated, custom-shaped swimming pool having approximately one thousand six hundred two (1,602 square feet) square feet in area, with a capacity of approximately thirty-three (33) persons and a depth ranging between three (3) feet and four (4) feet.

3.2.4.2 A landscaped sundeck surrounding the pool having approximately eleven thousand two hundred eighty-four (11,284 square feet) square feet of usable area and a capacity of approximately three hundred seventy seven (377) persons.

3.2.4.3 A men's restroom and a ladies' restroom in the pool area, each having approximately one hundred sixty-five (165 square feet) square feet and a capacity of approximately two (2) persons.

3.2.4.4 A whirlpool spa near the swimming pool having a surface area of approximately one hundred twenty (120 square feet) square feet and a capacity of approximately three (3) persons.

3.2.4.5 Cabanas may be made available in the area containing the above facilities, at the discretion of the Shared Facilities Unit Owner, as more fully described in Section 3.5 of the Declaration.

3.2.5. The Developer intends to expend a minimum of \$1,000.00 to provide certain personal property in and around these facilities, such as swimming pool equipment and deck chairs, etc. (to be selected in the absolute discretion of Developer).

3.3 Facilities in the Adjoining Parcel in Which Hotel Condominium Unit Owners Will Have Use Rights

The Adjoining Parcel Owner intends to develop or construct on the Adjoining Parcel a mixed use project, portions of which will be available for use by the Hotel Condominium Unit Owners and their family members, guests, tenants and invitees subject to the terms of the Restrictions and Easements Agreement and rules and procedures established from time to time by the Adjoining Parcel Owner in its exclusive discretion.

Generally, the Adjoining Parcel is expected to have the Restaurant and Retail Facilities, Business Center, Conference and Banquet Facilities, Hotel Lobby, Health Spa, Pool Deck and Terrace Facilities, Atrium, Retail Gallery, Lobby, administrative area, back-of-house facilities located in the Pedestals and/or the East Tower, and any other facilities noted herein or the Restrictions and Easements Agreements. The design, commencement and progress of the development and construction of these and other facilities, however, will be in the absolute discretion of the Adjoining Parcel Owner, with use restricted in the manner determined by the Adjoining Parcel Owner. Certain of these proposed improvements to the Adjoining Parcel are described in this section 3.3 of the Prospectus.

3.3.1. East Tower. A nineteen-story tower containing approximately three hundred forty-six (346) units, described in Section 1.5.1.1 of this Prospectus.

3.3.2. East Pedestal.

3.3.2.1 A restaurant and lounge, a bar/lounge, and retail facilities located on the first floor.

3.3.2.2 Business Center, Conference Facilities and Banquet Facilities located on the second floor:

3.3.2.3 The hotel's main lobby, and elevators with a restaurant, living room/lounge and terrace, retail facilities and a health spa located on the third floor:

3.3.2.4 A multi-story Atrium area is part of the East Pedestal.

3.3.2.5 A fitness center and pool deck with a heated pool, whirlpool spa, sundecks, restrooms, bar, and cabanas on the fifth floor of the East Pedestal.

3.3.2.6 The East Pedestal will also house various administrative and back-of-the-house facilities.

3.3.3. Central Pedestal.

3.3.3.1 The first floor of the Central Pedestal will contain retail facilities, a Retail Gallery and a Lobby.

3.3.3.2 The second, third and fourth floors of the Central Pedestal will contain parking.

3.3.3.3 Additional open air facilities, landscaping and terraces are located on the fifth floor of the Central Pedestal excluding the portion of the fifth floor of the open-air deck of the Central Pedestal containing terraces which are part of the Shared Facilities Unit and not the Adjoining Parcel.

3.3.4. West Pedestal

3.3.4.1 The first, second, third and fourth floors of the West Pedestal will contain parking.

3.3.5. Additional parking areas are located on the below ground level of and between the West, Central and East Pedestals, and at street level at various locations between or adjacent to the Pedestals.

3.3.6. All locations, areas, capacities, numbers, amounts and sizes set forth above regarding facilities are approximations only. The Developer does not currently intend to expand or eliminate the facilities currently contemplated though it reserves the right to do so in its exclusive discretion. Except for certain administrative, operational areas and the like, access to which is not generally granted to the public or persons not employees, for example, as referenced in 3.3.2.6, the Adjoining Parcel facilities described in 3.3.2, 3.3.3, 3.3.4, and 3.3.5 hereof will be available for access on a non-exclusive basis by occupants of the West Tower, as determined in the absolute discretion of and subject to the terms and conditions of the Declaration and the Restrictions and Easements Agreement, and the rules, regulations and procedures established from time to time by the Adjoining Parcel Owner, its tenants, licensees, managers and other persons operating such facilities, including without limitation the Hotel Flag, in their exclusive discretion, including but not limited to, hours of operation, dress code, menus, services, charges, restrictions, and other operating and use matters. The Hotel Condominium Unit Owners recognize the Adjoining Parcel will be open to the public in such manner, and under such circumstances as is deemed appropriate and reasonable by the Adjoining Parcel Owners and its tenants, licensees and manager in their exclusive discretion.

The Restrictions and Easements Agreement provides that the Hotel Condominium Unit Owner will be allocated a portion of the cost of cleaning, repairing, maintaining and establishing reserves for areas of the Adjoining Parcel available for use by or otherwise benefiting the Hotel Condominium Unit Owner including, without limitation, the parking structure and equipment, landscaping, driveways, the terrace facilities, the retail gallery, and the connecting hallway from the Central Pedestal to the East Pedestal, as determined in the absolute

discretion of the Adjoining Parcel Owner, which charge will be included in the Adjoining Parcel costs for the Hotel Condominium Unit Owner.

The foregoing facilities are not part of the Condominium Property and accordingly, shall not be governed, operated or regulated by the Association. Governance of these facilities, including, without limitation, any and all decisions regarding hours of operation, alterations to facilities, removal of facilities, modification of the facilities, and others, shall be made in the absolute discretion of the Adjoining Parcel Owner. Hotel Condominium Unit Owners shall only have such rights to use the facilities to the extent provided by the Restrictions and Easements Agreement. Notwithstanding the foregoing, both the Shared Facilities Unit Owner and the Adjoining Parcel Owner shall have the right to adopt reasonable rules and regulations or procedures to prohibit the dual usage of the facilities by a Hotel Condominium Unit Owner and a tenant of such Hotel Condominium Unit Owner's Hotel Condominium Unit during periods when such Hotel Condominium Unit is being rented or is available for rental.

3.4 Changes to Condominium Recreational Facilities located within the Shared Facilities Unit or Recreational and other Facilities within the Adjoining Parcel

DEVELOPER RESERVES THE RIGHT TO ELIMINATE, EXPAND, OR ADD ANY OF THE PROPOSED FACILITIES PRIOR TO COMPETITION OF CONSTRUCTION.

RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION.

3.4.1. The condominium recreational facilities are located within the Shared Facilities Unit and not within the Common Elements. The Shared Facilities Unit Owner reserves the right at any time to eliminate, provide, alter or expand any of the above-described condominium recreational facilities within the Shared Facilities Unit as the Shared Facilities Unit Owner deems appropriate. The consent of the Hotel Condominium Unit Owners or the Association shall not be required for any such construction, expansion or other determination. The Shared Facilities Unit Owner is not obligated, however, to so expand any facilities or to provide additional facilities or to retain the existing facilities. The costs of maintaining and operating the Shared Components, as so expanded or reduced, will continue to be borne by the Hotel Condominium Unit Owners, as described in Section 4.3 below and elsewhere herein.

3.4.2. As to the facilities contained within the Adjoining Parcel, the Adjoining Parcel Owner reserves the right at any time to eliminate, provide, alter or expand any of the Adjoining Parcel Amenities as the Adjoining Parcel Owner deems appropriate in its sole and absolute discretion. The consent of the Unit Owners or the Association shall not be required for any such construction, expansion or other determination. The Adjoining Parcel Owner is not obligated, however, to so expand any facilities or to provide additional facilities or to retain the existing facilities.

SECTION 4. CLOSING EXPENSES: THE PURCHASE AGREEMENT; EXPENSES OF OWNERSHIP; ESTIMATED OPERATING BUDGET

4.1 Closing Expenses

4.1.1. The "Closing" is the point in time when the Hotel Condominium Unit Owner pays the balance of the purchase price due the Developer under the Purchase Agreement for the Hotel Condominium Unit, the Developer delivers the Condominium Special Warranty Deed for the Hotel Condominium Unit, and various other "closing documents" completing the purchase of the Condominium Parcel are executed and delivered.

4.1.2. At the time of Closing, a Hotel Condominium Unit Owner will make a contribution to the working capital account of the Association in an amount equal to three (3) times the monthly amount of Assessments for Common Expenses (not to be credited against regular Assessments). Hotel Condominium Unit Owner's must also pay at the time of Closing a working capital contribution in an amount equal to three (3) times the monthly amount of Shared Costs owed to the Shared Facilities Unit Owner (which amount includes a proportionate share of the working capital contribution of the Shared Facilities Unit Owner for Common Expenses), which is payable directly to the Shared Facilities Unit Owner to provide it with initial capital and shall not be credited against regular charges. Hotel Condominium Unit Owners must also pay at the time of closing a working capital contribution in an amount equal to three (3) times the monthly amount of charges and fees owed to the Adjoining Parcel Owner under the Restrictions and Easements Agreement, which is payable directly to the Adjoining Parcel Owner to provide it with initial capital and shall not be credited against regular charges. These sums shall be deposited in the Association's or Shared Facilities Unit Owner's or Adjoining Parcel Owner's respective operating account for the purpose of establishing a pool of maintenance funds, as applicable, which may be used by the respective entity for any purpose (including, but not limited to reimbursement to the Developer for certain expenses as are more particularly described in Section 4.2 hereof entitled "Contracts to Be Assigned by Developer").

4.1.3. Expenses relating to the Hotel Condominium Unit Owner's Unit (e.g., taxes, and governmental assessments and current maintenance Assessments and/or expenses, charges and fees, as applicable, due the Association, the Shared Facilities Unit Owner and the Adjoining Parcel Owner) will be apportioned between Developer and Hotel Condominium Unit Owner as of Closing, provided payments or credits for tax proration will be made as provided in the Purchase Agreement.

4.1.4. As provided in the Purchase Agreement, Developer will pay the cost of recording the Condominium Special Warranty Deed, the cost of documentary stamps on that deed and the premium for the

owner's policy of title insurance (Florida ALTA Standard Residential Condominium) to be issued subsequent to the Closing. Developer shall not be obligated to provide a Hotel Condominium Unit Owner with a title opinion or abstract of title.

4.1.5. Hotel Condominium Unit Owners shall pay all of the following Closing costs:

4.1.5.1 A closing fee equal to one and three quarters percent (1.75 %) of the Purchase Price of the Hotel Condominium Unit which may be used to pay such costs as Developer may designate in its sole and absolute discretion, including, without limitation, for the cost of recording the Deed, the documentary stamp taxes required to be affixed to the Deed, the premium for an owner's title insurance policy for Hotel Condominium Unit Owner, and other assessments, if any, that are to be prorated as of the Closing Date, and administrative expenses associated with the transaction, including, without limitation, Developer's legal fees and expenses.

4.1.5.2 All applicable utility service deposits.

4.1.5.3 Assessments for Common Expenses of the Association. Assessments for Common Expenses of the Association will be prorated from the date of the Closing to the end of the month in which the Closing takes place. A Hotel Condominium Unit Owner will also pay an amount equal to two months' Common Expense Assessments charged by the Association for the two months following Closing, and the working capital contribution to the Association described in Section 4.1.2 above, which working capital will not be credited against regular Assessments not yet due and may be used to pay any deficits or other sums the Association may be required to pay, will also be collected at Closing.

4.1.5.4 Charges for Shared Costs of the Shared Facilities Unit Owner. Charges for Shared Costs of the Shared Facilities Unit Owner will be prorated from the date of the Closing to the end of the month in which the Closing takes place. A Hotel Condominium Unit Owner will also pay an amount equal to two months' Shared Costs charged by the Shared Facilities Unit Owner for the two months following Closing, and the working capital contribution to the Shared Facilities Unit Owner described in Section 4.1.2 above, which working capital will not be credited against regular charges not yet due and may be used to pay any deficits or other sums the Shared Facilities Unit Owner or any of its affiliates may be required to pay, will also be collected at Closing.

4.1.5.5 Charges for Adjoining Parcel Costs of the Adjoining Parcel Owner. Charges for Adjoining Parcel Costs of the Adjoining Parcel Owner, as more particularly defined in the Restrictions and Easements Agreement, attached as Exhibit 7 to this Prospectus, will be prorated from the date of the Closing to the end of the month in which the Closing takes place. A Hotel Condominium Unit Owner will also pay an amount equal to two months' Adjoining Parcel Costs charged by the Adjoining Parcel Owner payable under the Restrictions and Easements Agreement for the two months following Closing, and the working capital contribution to the Shared Facilities Unit Owner described in Section 4.1.2 above, which working capital will not be credited against regular charges not yet due and may be used to pay any deficits or other sums the Seller or any of its affiliates may be required to pay, will also be collected at Closing. A Hotel Condominium Unit Owner shall also pay to the Adjoining Parcel Owner at closing an amount equal to a prorated amount for the month of closing plus the Access Fee of the Unit for the twelve (12) month period beginning with the first day of the first month following closing, as described in the Restrictions and Easements Agreement.

4.1.5.6 Mortgage closing costs, if a mortgage loan is obtained, including loan points, abstracting charges, mortgagee title insurance premium cost, legal fees, credit report costs, recording fees, intangible tax, and all other loan closing costs and charges of the lender.

4.1.5.7 Each Hotel Condominium Unit Owner must obtain insurance policies providing insurance coverage in addition to that provided by the Shared Facilities Unit Owner. Please refer to Section 2.1.6 of this Prospectus for further details. Each Hotel Condominium Unit Owner should consult his or her insurance agent to determine the extent such personal coverage is advisable, in addition to the coverage provided by the Shared Facilities Unit Owner.

4.1.5.8 All closing costs of the Shared Facilities Unit Owner, including the Shared Facilities Share of Common Expenses and capital contributions due at closing, shall be allocated among the Hotel Condominium Unit Owners in accordance with Exhibit "H" to the Declaration, and collected by the Shared Facilities Unit Owner from each Hotel Condominium Unit Owner at each closing, and shall be paid by the Shared Facilities Unit Owner as each Hotel Condominium Unit is closed from the Shared Costs payments made by the Hotel Condominium Unit Owner to the Shared Facilities Unit Owner.

4.1.5.9 Attorney's fees for any attorney retained by Hotel Condominium Unit Owner may be payable at the Closing.

4.1.5.10 All other charges payable by the Hotel Condominium Unit Owners under the Purchase Agreement.

4.1.6. If Developer permits a scheduled Closing to be delayed (which the Developer is not obligated to do) at the request of a Hotel Condominium Unit Owner, or by reason of the failure of a corporate Hotel Condominium Unit Owner to produce all corporate documents requested by Developer, or for any other reason (except for a delay desired by the Developer), Developer may impose a late charge equal to interest, at the highest applicable lawful rate, on funds not collected prior to the actual Closing from the original scheduled date to the date of actual Closing.

4.1.7. If Developer agrees to wait to be funded from Hotel Condominium Unit Owner's lender beyond Closing, or if Developer accepts payment by personal check (as contemplated but not required, in the Purchase Agreement), Hotel Condominium Unit Owner shall pay to Developer a late funding charge equal to interest, at the highest applicable lawful rate, on funds not collected or cleared at or prior to Closing from the date of Closing until actual funding or clearance (to be estimated, subject to later readjustment, by Developer at Closing).

4.1.8. The Purchase Agreement provides that all transactions will be for all cash and will not be contingent or conditioned upon Hotel Condominium Unit Owner securing a mortgage from any lender. That provision and all other provisions in the Purchase Agreement may be modified in any manner in any particular case or cases without the consent of any other Hotel Condominium Unit Owner that is not a party to that contract. The modification of any Purchase Agreement shall not vest any Hotel Condominium Unit Owner whose contract was not so modified with any rights of any sort.

4.2 Contracts to Be Assigned by Developer

Upon or before closing of title to the Unit, Developer will assign to the Association and/or to the Shared Facilities Unit Owner, as applicable, all of Developer's right, title and interest in and to all contracts relating to the provision of utilities, insurance and other services to the Condominium, related to the Common Elements or the Shared Components, as applicable, and from and after such date, all benefits and burdens thereunder shall accrue and apply to the Association and/or the Shared Facilities Unit Owner, as applicable. The Developer will be entitled to be reimbursed from the Hotel Condominium Unit Owners for all deposits, prepaid premiums, rentals and other consideration paid by the Developer to such insurers, contractors and utility companies, pro-rated as of the date of closing for each Unit, except that the deposits for utilities will be reimbursed in full without proration.

4.3 Expenses of Ownership

4.3.1. Attached as part of Exhibit 2 to this Prospectus is the Estimated Operating Budget for the Association, which Budget constitutes a summary of the mandatory financial obligations of Unit Owners payable to the Association as Common Expenses during a calendar year and periods of time described in the Budget. The Budget is not intended, nor should it be considered to be all-inclusive or as a representation, guarantee or warranty of any kind whatsoever of all expenses to be incurred as a result of ownership in the Condominium. For example, the Budget does not include real estate taxes, Unit Owner insurance, or telephone or utility bills that are billed directly to the Unit Owner and not through the Association; nor does the Budget constitute any warranty or guarantee as to any Special Assessments that may be necessitated and levied under the Declaration. The nonpayment of Common Expenses by other Unit Owners in the Condominium can also affect your Assessments. The Association collects Common Expenses on a monthly basis in advance.

4.3.2. An Estimated Operating Budget for the Shared Components ("Shared Components Budget") is also set forth as part of Exhibit 2 hereto, which Shared Components Budget constitutes a summary of the mandatory financial obligations of Hotel Condominium Unit Owners payable to the Shared Facilities Unit Owner as Shared Costs during a calendar year and periods of time described in the Shared Components Budget. The Shared Components Budget is not intended, nor should it be considered to be all inclusive or as a representation, guarantee or warranty of any kind whatsoever of all expenses or as to the amount of any expense, to be incurred as a result of ownership in the Condominium. This Shared Components Budget provides for reserves applicable to the Shared Components. The Shared Costs may in the absolute discretion of the Shared Facilities Unit Owner be included with the Association Assessments for budgetary purposes and collections, but such inclusion shall in no way affect the enforcement rights and remedies provided to the Shared Facilities Unit Owner under the Declaration for collection of the Shared Costs.

4.3.3. An Estimated Operating Budget for the Adjoining Parcel Costs ("Adjoining Parcel Budget") is also set forth as part of Exhibit 2 hereto, which Adjoining Parcel Budget constitutes a summary of the mandatory financial obligations of Hotel Condominium Unit Owners payable to the Adjoining Parcel Owner for their allocable Adjoining Parcel Costs during a calendar year and periods of time described in the Adjoining Parcel Budget. The Adjoining Parcel Budget is not intended, nor should it be considered to be all inclusive or as a representation, guarantee or warranty of any kind whatsoever of all expenses or as to the amount of any expense, to be incurred as a result of ownership in the Condominium. This Adjoining Parcel Budget provides for reserves applicable to the Adjoining Parcel Costs. The Adjoining Parcel Costs may in the absolute discretion of the Adjoining Parcel Owner be included with the Association Assessments for budgetary purposes and collection but such inclusion shall in no way affect the enforcement rights and remedies provided to the Adjoining Parcel Owner under the Restrictions and Easements Agreement for collection of the Adjoining Parcel Costs.

4.4 Budgetary Materials

4.4.1. Procedure for Preparation of the Association's Budget

The Bylaws of the Association provide for the Board to adopt a Budget for each fiscal year for the estimated Common Expenses for the Condominium. The Budget will include various items of expense, more particularly described in Section 11.2 of the Bylaws. A copy of the proposed Budget and the proposed Assessments for each year are to be transmitted to each Unit Owner by the Association in accordance with the Bylaws.

4.4.2. Guarantee and Guarantee Period

4.4.2.1 The Developer prepared the Budget, Shared Components Budget and Adjoining Parcel Budget attached as Exhibit 2. Developer believes that the Budgets are reliable. However, because actual

expenditures may differ from estimated expenditures and because of possible changes in the future expenses of the Condominium, the Shared Facilities Unit and Adjoining Parcel, all of such Budgets are not intended nor should it be considered as a representation, guarantee or warranty of any kind whatsoever including, without limitation, that the actual expenses, or the amount of any expense, for any period of operation may not vary from the amount estimated, that the Association, Shared Facilities Unit Owner or the Adjoining Parcel Owner will not incur additional expenses or that the Association, Shared Facilities Unit Owner, or the Adjoining Parcel Owner will not provide for additional reserves or other sums not reflected in the proposed Budgets.

4.4.2.2 Section 718.112(2)(f)2 of the Act requires that the Budget include a reserve account for capital expenditures and deferred maintenance for roof replacement, building painting and pavement resurfacing and for any other item for which the deferred maintenance expense or replacement cost exceeds Ten Thousand (\$10,000.00) Dollars, unless a majority of the members of the Association present (in person or by proxy) vote at a duly called meeting of the Association or act by written agreement in lieu of a meeting, to provide no reserves or reserves less adequate than required by the Act for the Common Elements. Notwithstanding the foregoing requirement, however, the roof and portions of the building to which repainting applies, are not a part of the Common Elements but rather are a part of the Shared Facilities Unit. Likewise, the pavement is not a part of the Common Elements but rather is a part of the Adjoining Parcel. Furthermore, there are other items to which the deferred maintenance expense or replacement cost reserve requirement would apply. Consequently, none of the foregoing reserves are applicable at the present time. If that should change, however, the Developer intends to cast the votes of its Units to waive the funding of reserves for any Common Elements for each of the first two (2) fiscal years of operation, as permitted by Section 718.112(2)(f)2 of the Act, and, provided that vote carries the issue, no collection will be made for these reserves during that time. Thereafter, on an annual basis, a majority of the Association's non-developer members may vote to continue not to provide any Association reserves, if any. However, the payment of reserves which may be imposed by the Shared Facilities Unit Owner or Adjoining Parcel Owner are mandatory and are not subject to waiver or other vote of the Hotel Condominium Unit Owners. If an election is in fact made to waive Association reserves at such time as any may become applicable in the future, the Assessments per Hotel Condominium Unit will be as set forth in the then current Budget as "Assessment per Unit – Without Reserves". If no such election is made, the Assessments per Unit will be as set forth in the then current Budget as "Assessments per Unit – With Reserves".

4.4.2.3 Developer recognizes that by reason of difficulties normally encountered in initially setting up the management and operation of a new development, it is useful to provide some form of guarantee of Assessments for initial operations. Accordingly, Developer agrees with each Hotel Condominium Unit Owner that the Assessments for Common Expenses of the Association will not exceed certain amounts, as follows: from the recording of the Declaration until the last day of the third (3rd) full calendar month following the recording of the Declaration (the "Guarantee Expiration Date"), Developer guarantees, pursuant to Section 718.116(9)(a)(2) of the Act, that Assessments for Common Expenses of the Association will not exceed the following amounts:

Unit Type	Unit Numbers of Units This Type	Total Annual Assessment	Total Monthly Assessment
01	502	\$ 144.72	\$ 12.06
02	501	91.81	7.65
03	503	94.08	7.84
04	505, 605, 705, 805, 905, 1005, 1105, 1205, 1405, 1505	149.40	12.45
05	507	149.90	12.49
06	509	157.48	13.12
07	508	159.50	13.29
08	506	149.40	12.45
09	504, 604, 704, 804, 904, 1004, 1104, 1204, 1404, 1504	149.40	12.45
10	602, 702, 802, 902, 1002, 1102, 1202, 1402, 1502, 1602, 1702, 1802, 1902, 2002, 2102, 2202, 2302, 2402	168.85	14.07
11	601, 701, 801, 901, 1001, 1101, 1201, 1401, 1501, 1601, 1701, 1801, 1901, 2001, 2101, 2201, 2301, 2401	91.81	7.65
12	603, 703, 803, 903, 1003, 1103, 1203, 1403, 1503, 1603, 1703, 1803, 1903, 2003, 2103, 2203, 2303, 2403	94.08	7.84
13	607, 707, 807, 907, 1007, 1107, 1207, 1407, 1507, 1607, 1707	149.40	12.45
14	609, 709, 809, 909, 1009, 1109, 1209, 1409, 1509, 1609, 1709, 1809, 1909, 2009, 2109, 2209, 2309, 2409	157.48	13.12
15	608, 708, 808, 908, 1008, 1108, 1208, 1408, 1508, 1608, 1708, 1808, 1908, 2008, 2108, 2208, 2308, 2408	159.50	13.29
16	606, 706, 806, 906, 1006, 1106, 1206, 1406, 1506, 1606, 1706	149.40	12.45
17	1605	149.40	12.45
18	1604	149.40	12.45

19	1705	149.40	12.45
20	1704	149.40	12.45
21	1805, 1905, 2005, 2105, 2205, 2305, 2405	149.40	12.45
22	1807, 1907, 2007, 2107, 2207, 2307, 2407	149.40	12.45
23	1806, 1906, 2006, 2106, 2206, 2306, 2406	149.40	12.45
24	1804, 1904, 2004, 2104, 2204, 2304, 2404	149.40	12.45
N/A	Shared Facilities Unit	11,046.17	920.51
		\$14,457.55	\$1,204.80

Developer will pay all Common Expenses not paid for by Assessments of Unit Owners other than Developer ("Guarantee for Common Expenses"), except for those Special Assessments exempted from the Guarantee for Common Expenses pursuant to that section of the Act, which Special Assessments are to be paid by all Unit Owners, including Developer. During the Guarantee Period, Developer will not have to pay Assessments, but will be required to make up any shortfall of Common Expenses payments over the guaranteed amount to be paid by other Unit Owners.

4.4.2.4 After the Guarantee Expiration Date, Developer shall have the option of extending the Guarantee Expiration Date for twenty-three (23) additional three (3) month periods (each and "Additional Guarantee Period"), or paying the share of Common Expenses and Assessments attributable to Units it then owns. The Developer shall be deemed to have automatically extended the Guarantee Expiration Date by an Additional Guarantee Period unless the Developer notifies the Board of Directors in writing of its election not to extend the Guarantee Expiration Date for an Additional Guarantee Period. The Developer may also extend the Guarantee Expiration Date for definite period of time by written agreement with a majority of non-Developer Unit Owners, however, the guarantee may, in the absolute discretion of the Developer, terminate on the date when control of the Association is turned over to Unit Owners other than Developer if such date when control of the Association is turned over to Unit Owners other than Developer occurs prior to the expiration of the Guarantee Period. Notwithstanding the above and as provided in Section 718.116(9)(a)(2) of the Act, in the event of a casualty loss affecting the Condominium resulting from a natural disaster or Act of God that is not covered by insurance proceeds from the insurance maintained by the Association as required by Section 718.111(11)(a) of the Act (an "Extraordinary Financial Event"), the costs necessary to effect restoration shall be assessed against all Unit Owners owning Units on the date of such Extraordinary Financial Event, and their successors and assigns, including the Developer (with respect to Units owned by the Developer).

4.4.2.5 The Guarantee applies only to Assessments of the Association and does not apply to Shared Costs or Adjoining Parcel Costs, including but not limited to any special assessments, charges, expenses, and costs and the Access Fee incurred by the Shared Facilities Unit Owner and/or Adjoining Parcel Owner which may be charged to a Hotel Condominium Unit Owner as provided in the Condominium Documents and the Restrictions and Easements Agreement.

4.4.3. Assessment and Lien Powers.

THERE IS A LIEN OR A LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE MAINTENANCE, OPERATION, UPKEEP AND REPAIR OF THE RECREATIONAL OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

4.4.3.1 The Declaration, attached as Exhibit 1 to this Prospectus, provides procedures for allocation of Assessments, including Special Assessments, and establishes lien rights for collection of Assessments. Please refer to this document for provisions regarding Special Assessments defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement, including the necessary fixtures and personal property relating thereto. Assessment powers and lien rights are vested in the Association.

4.4.3.2 The Declaration, attached as Exhibit 1 to this Prospectus, provides procedures for allocation of charges for the Shared Costs, and establishes lien rights for collection of such charges in favor of the Shared Facilities Unit Owner in a manner that is broader than the procedures for the collection of Assessments by the Association. Assessment powers and lien rights are vested in the Shared Facilities Unit Owner as against Hotel Condominium Unit Owners and are different to those vested in the Association. Please refer to Section 12 of the Declaration attached as Exhibit 1 to this Prospectus.

4.4.3.3 The Restrictions and Easements Agreement, attached as Exhibit 7 to this Prospectus, provides procedures for payment of Adjoining Parcel Costs and establishes lien rights for collection of such charges in favor of the Adjoining Parcel Owner in a manner that is broader than the procedures for the collection of Assessments by the Association. Assessment powers and lien rights are vested in the Adjoining Parcel Owner as against Hotel Condominium Unit Owners and are different to those vested in the Association. Please refer to the Restrictions and Easements Agreement attached as Exhibit 7 to this Prospectus.

4.5 Enforcement

4.5.1. Under the Act and Section 11.3 of the Declaration, attached as Exhibit 1 to this Prospectus, upon an uncured default by any Unit Owner in the payment of any Assessment, the Association may acquire a lien upon such Unit Owner's Unit and the share of the Common Elements appurtenant to such Unit in the amount of the unpaid Assessment, plus interest. A Unit Owner in default will be liable to the Association for court costs and reasonable attorney fees at all trial and appellate levels and post-judgment proceedings incurred by it in the collection of such unpaid Assessment and the enforcement of its lien, the payment of which will also be secured by such lien. Such a lien will be effective upon the recording of a Claim of Lien in the public records of Broward County, Florida, and will remain in force until all amounts secured thereby, plus interest thereon, have been fully paid, or for a period of one (1) year, when it shall expire, whichever comes first, unless an action to enforce the lien is commenced during the one (1) year period. The lien may be foreclosed by a suit brought in the name of the Association, acting on behalf of the Unit Owners, in the same manner as the foreclosure of a mortgage on real property, or an action may be brought by the Association to recover the unpaid Assessment without foreclosing the lien.

4.5.2. Under Section 12 of the Declaration, attached as Exhibit 1 to this Prospectus, upon an uncured default by any Hotel Condominium Unit Owner in the payment of its allocated percentage of the Shared Costs, the Shared Facilities Unit Owner may acquire a lien upon such Hotel Condominium Unit Owner's Unit and the share of the Common Elements appurtenant to such Hotel Condominium Unit in the amount of the unpaid Shared Costs, plus interest. A Hotel Condominium Unit Owner in default will be liable to the Shared Facilities Unit Owner for court costs and reasonable attorney fees at all trial and appellate levels and post-judgment proceedings incurred by it in the collection of such unpaid Shared Costs and the enforcement of its lien, the payment of which will also be secured by such lien. Such a lien will be effective upon the recording of a Claim of Lien in the public records of Broward County, Florida, and will remain in force until all amounts secured thereby, plus interest thereon, have been fully paid. The lien may be foreclosed by a suit brought in the name of the Shared Facilities Unit Owner, in the same manner as the foreclosure of a mortgage on real property, or an action may be brought by the Shared Facilities Unit Owner to recover the unpaid Shared Costs without foreclosing the lien. Further, at the absolute discretion of the Shared Facilities Unit Owner, the Association can act as its agent to collect and enforce such liens.

4.5.3. Under Section 8 of the Restrictions and Easements Agreement, attached as Exhibit 7 hereto, upon an uncured default by any Hotel Condominium Unit Owner in the payment of any of the Adjoining Parcel Costs payable to the Adjoining Parcel Owner, the Adjoining Parcel Owner may acquire a lien upon such Hotel Condominium Unit Owner's Unit and the share of the Common Elements appurtenant to such Unit in the amount of the unpaid maintenance charges and fees, plus interest. A Hotel Condominium Unit Owner in default will be liable to the Adjoining Parcel Owner for court costs and reasonable attorney fees at all trial and appellate levels and post-judgment proceedings incurred by it in the collection of such unpaid maintenance charges and fees and the enforcement of its lien, the payment of which will also be secured by such lien. Such a lien will be effective upon the recording of a Claim of Lien in the public records of Broward County, Florida, and will remain in force until all amounts secured thereby, plus interest thereon, have been fully paid. The lien may be foreclosed by a suit brought in the name of the Adjoining Parcel Owner, in the same manner as the foreclosure of a mortgage on real property, or an action may be brought by the Adjoining Parcel Owner to recover the unpaid maintenance charges and fees without foreclosing the lien. Further, at the absolute discretion of the Adjoining Parcel Owner, the Association can act as its agent to collect and enforce such lien.

SECTION 5. MANAGEMENT OF THE CONDOMINIUM

5.1 There is not presently a contract for the management of the Common Elements of the Condominium Property. The Association may, however, enter into an agreement with a manager to serve the Common Elements of the Condominium. Any such management agreement may be cancelled by Unit Owners pursuant to the Condominium Act, Florida Statutes, Section 718.302, in addition to the means of termination which may be provided in the agreement. Section 718.302(1)(a), Florida Statutes, provides in relevant part that:

If . . . unit owners other than the developer have assumed control of the association, or if unit owners other than the developer own not less than 75 percent of the voting interests in the condominium, the cancellation shall be by concurrence of the owners of not less than 75 percent of the voting interests other than the voting interests owned by the developer. If a grant, reservation or contract is so cancelled and the unit owners other than the developer have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management or operation in lieu of the cancelled obligation, at the direction of the owners of not less than a majority of the voting interests in the condominium other than the voting interests owned by the developer.

Any fees which may be payable by the Association to a manager shall be part of the Common Expenses of the Condominium that are included in the Assessments payable by Unit Owners to the Association.

5.2 Currently, there are no maintenance or service contracts affecting the Common Elements of the Condominium having a non-cancelable term in excess of one (1) year. The Association is empowered at any time and from time to time, to enter into such maintenance and/or service contracts for valuable consideration and upon such terms and conditions as the Board of Directors shall approve without the consent of Unit Owners. Any maintenance and/or service contracts may be subject to cancellation by the Association and by Unit Owners directly in accordance with the aforesaid Section 718.302, Florida Statutes.

5.3 It is contemplated that Developer will from time to time enter into management contract(s) franchises, licenses, or similar agreements with one or more hotel management companies, licensees or franchisees, or others as the case may be, or their affiliates, which operate the units on the Adjoining Parcel and likewise operate and manage either the Common Elements and/or the Shared Components, or both.

SECTION 6. EASEMENTS

6.1 The Adjoining Parcel, including without limitation, the Adjoining Parcel Amenities are not included in the Condominium Property, but rather, occupants of the Condominium are granted certain access rights therein which vary from item to item as, and only to the extent, more particularly described in that certain Restrictions and Easements Agreement, a copy of which is included in this Prospectus as Exhibit 7 hereto. Accordingly, the Condominium Property shall be governed and burdened by, and subject to, and each Unit Owner shall be governed and burdened by, and subject to, all of the terms and conditions of the Restrictions and Easements Agreement. Each Unit Owner agrees that the rights in and to the Condominium Property are junior and subordinate to the rights granted under the Restrictions and Easements Agreement, and agrees to be bound by the terms thereof.

6.2 Pursuant to the Restrictions and Easements Agreement, the Adjoining Parcel Owner has the right to display promotional signs or materials relating to the Adjoining Parcel within the Common Elements or Shared Components. The Adjoining Parcel Owner is also entitled to use portions of the Shared Facilities Unit to provide one or more Adjoining Parcel Amenities to and for the benefit of the Hotel Condominium Units.

6.3 In addition to the various easements provided in the Declaration, the Condominium Property may be made subject to customary easements in favor of various public or private utilities. Any easement in favor of a public or private utility or similar company or authority may be granted by the Developer, Shared Facilities Unit Owner or the Association on a "blanket" basis or by use of a specific legal description. See Section 1.7 hereof for the names of the suppliers of certain utilities to the Condominium. For more details, refer to the Declaration and to Section 2.1.2. of this Prospectus. The easements provided for in the Declaration and the Act are not summarized here.

SECTION 7. MISCELLANEOUS MATTERS

7.1 Presale Requirement. Pursuant to Section 6(b) of the Purchase Agreement, Developer is not required to begin or complete construction of the West Tower and the proposed Units, or to convey a Hotel Condominium Unit to a Hotel Condominium Unit Owner, unless and until at least one hundred percent (100%) of the Hotel Condominium Units in the Condominium are under contract for purchase, pursuant to legally enforceable Purchase Agreements between Developer and Hotel Condominium Unit Owners for which the rescission period has expired and for which the Developer's Lender has accepted such sale (the "Presale Requirement"). Once this Presale Requirement has been satisfied, Developer will send written notice thereof to all Unit Owners. The day the Presale Requirement has been satisfied, or waived by Developer as provided below, is referred to as the "Sales Date." No right of cancellation exists for the period of time prior to the Sales Date except for matters otherwise provided for in the Purchase Agreement. The twelve (12) month period from the date the first Unit Owner signed a Purchase Agreement for the purchase of a Unit in the Condominium is referred to as the "Presale Period," which Presale Period is estimated to expire on approximately January 1, 2006. If the Presale Requirement has not been satisfied or waived by Developer by written notice within the Presale Period, Developer will cause all Unit Owners' deposits to be returned to them and thereby terminate all Purchase Agreements. If Developer proceeds after the Presale Period or waives the Presale Requirement, Developer commits to construct the Condominium.

7.2 Pursuant to Section 6(c) of the Purchase Agreement, Seller may terminate any Purchase Agreements for three or more units in the Condominium whereby the buyers in such Purchase Agreements are directly or indirectly related. Such right of termination is related to whether any lender making a loan, the proceeds of which are for the development of the Condominium, is insecure as to such buyers' ability to close under any or all Purchase Agreements for more than two (2) units in the Condominium. A buyer may be asked to provide financial and other information to Developer or any such lender, which information may be disclosed as required by the Developer or lender. In the event, however, any such Purchase Agreements are terminated, absent any event of default by buyer under any respective Purchase Agreement, all deposits placed under such terminated agreements shall be returned to buyer and the parties shall be relieved of all rights and obligations thereunder.

7.3 Among other acts of God and uncontrollable events, hurricanes have occurred in South Florida and, as waterfront property, the project is exposed to the potential damages of hurricanes, including, but not limited to, damages from high winds, storm surges and wind-driven rain. Water damage or other damages from this or other extraordinary causes shall not be the responsibility of the Developer.

7.4 Radon. Under the laws of the State of Florida, each prospective Unit Owner is hereby advised that radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health agency. The foregoing notice is provided in order to comply with state law and is for informational purposes only. **Developer does not conduct radon testing with respect to the Condominium and specifically disclaims any and all representations or warranties as to the absence of radon gas or radon producing conditions in connection with the Condominium.**

7.5 The Bureau of Standards and Registration of the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, has determined that the Condominium is a "commercial condominium" and not a "residential condominium" or "mixed-use

condominium” under the Act (the “Determination”). Accordingly, as a commercial condominium and not a residential condominium or mixed-use condominium, the provisions in the Prospectus and Condominium Documents, including the Restrictions and Easements Agreement, and any statutory provisions applicable specifically to residential condominiums or mixed-use condominiums and not to commercial condominiums, do not apply to the Condominium. A purchaser of a Unit agrees with the Developer, by execution and delivery of a Purchase Agreement to the Developer, to be bound by the Determination.

SCHEDULE A

TO PROSPECTUS

NUMBER OF BEDROOMS AND BATHROOMS IN EACH UNIT

SCHEDULE "A" TO PROSPECTUS

Number of Bathrooms and Bedrooms in Each Unit
(for Unit Numbers and Floor Plans, see Exhibit "6" to the Prospectus)

<u>UNIT TYPE</u>	<u>DESIGNATED UNIT NUMBERS</u>	<u>NUMBER OF BEDROOMS</u>	<u>NUMBER OF BATHROOMS</u>
01	502	2	2
02	501	1	1
03	503	1	1
04	505, 605, 705, 805, 905, 1005, 1105, 1205, 1405, 1505	2	2
05	507	2	2
06	509	2	2
07	508	2	2
08	506	2	2
09	504, 604, 704, 804, 904, 1004, 1104, 1204, 1404, 1504	2	2
10	602, 702, 802, 902, 1002, 1102, 1202, 1402, 1502, 1602, 1702, 1802, 1902, 2002, 2102, 2202, 2302, 2402	2	2
11	601, 701, 801, 901, 1001, 1101, 1201, 1401, 1501, 1601, 1701, 1801, 1901, 2001, 2101, 2201, 2301, 2401	1	1
12	603, 703, 803, 903, 1003, 1103, 1203, 1403, 1503, 1603, 1703 1803, 1903, 2003, 2103, 2203, 2303, 2403	1	1
13	607, 707, 807, 907, 1007, 1107, 1207, 1407, 1507, 1607, 1707	2	2
14	609, 709, 809, 909, 1009, 1109, 1209, 1409, 1509 1609, 1709, 1809, 1909, 2009, 2109, 2209, 2309, 2409	2	2
15	608, 708, 808, 908, 1008, 1108, 1208, 1408, 1508, 1608, 1708, 1808, 1908, 2008, 2108, 2208, 2308, 2408	2	2
16	606, 706, 806, 906, 1006, 1106, 1206, 1406, 1506, 1606, 1706	2	2
17	1605	2	2
18	1604	2	2
19	1705	2	2
20	1604	2	2
21	1805, 1905, 2005, 2105, 2205, 2305, 2405	2	2
22	1807, 1907, 2007, 2107, 2207, 2376, 2407	2	2
23	1806, 1906, 2006, 2206, 2206, 2306, 2406	2	2
24	1804, 1904, 2004, 2104, 2204, 2304, 2404	2	2

EXHIBIT "1"

TO PROSPECTUS

DECLARATION OF CONDOMINIUM OF
FORT LAUDERDALE RESIDENCES, A HOTEL CONDOMINIUM

This instrument prepared by, or under the supervision of (and after recording, return to):

Andrew M. Gross, Esq.
Hunt, Cook & Gross, P.A.
2200 NW Corporate Boulevard, Suite 401
Boca Raton, Florida 33431

(Reserved for Clerk of Court)

**DECLARATION OF CONDOMINIUM
OF
FORT LAUDERDALE RESIDENCES, A HOTEL CONDOMINIUM**

Capri Resorts, LLC, a Florida limited liability corporation (the "Developer") hereby declares:

1. **Introduction and Submission.**

- 1.1. **The Condominium Realty.** The Developer owns fee title to certain real property located in Broward County, Florida, as more particularly described in **Exhibit "A"** annexed hereto (the "**Condominium Realty**").
- 1.2. **Restrictions and Easements Agreement.** The Condominium Realty is benefited and burdened by that certain Declaration of Restrictions and Easements Agreement dated ____, 200__ and recorded ____, 200__ under Clerk's File Number ____ of the Public Records of Broward County, Florida (the "**Restrictions and Easements Agreement**"), which, among other things, grants certain rights to the Unit Owners over and upon the adjoining property more particularly described in **Exhibit "B"** annexed hereto (the "**Adjoining Parcel**").
- 1.3. **Submission Statement.** The Developer hereby submits the Condominium Realty and all improvements erected or to be erected thereon and all other property, real, personal or mixed, now or hereafter situated on or within the Condominium Realty, (but excluding all public or private utility installations therein or thereon) and ingress and egress use rights, as referenced in Section 3(d) of the Restrictions and Easements Agreement, and parking use rights, as referenced in Section 3(e) of the Restrictions and Easements Agreement, in and to the Adjoining Parcel (but not the title thereto) in the manner provided in the Restrictions and Easements Agreement, to the condominium form of ownership and use in the manner provided for in the Act as it exists on the date hereof and as it may be hereafter renumbered. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Condominium Realty, shall for any purposes be deemed part of the Condominium Property or be subject to the jurisdiction of the Association, the operation and effect of the Act or any rules or regulations promulgated pursuant thereto, unless expressly provided. Without limiting any of the foregoing, no portion of the fee title of the Adjoining Parcel shall for any purposes be deemed part of the Condominium Property or be subject to the jurisdiction of the Association, the operation and effect of the Act or any rules or regulations promulgated pursuant thereto.
- 1.4. **Name.** The name by which this condominium is to be identified is the **Fort Lauderdale Residences, a Hotel Condominium** (hereinafter called the "**Condominium**").

2. **Definitions.** The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- 2.1. "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as it may be hereafter renumbered.
- 2.2. "Adjoining Parcel" shall have the meaning ascribed to it in Section 1.2 above and shall also include all airspace located above the vertical boundaries of the Condominium Realty as described on **Exhibit "A."** The fee title to the Adjoining Parcel is NOT part of the Condominium Property, and nothing herein shall be deemed to grant to the Unit Owners any rights in or to the Adjoining Parcel other than as are expressly granted in the Restrictions and Easements Agreement.
- 2.3. "Adjoining Parcel Costs" shall have the meaning ascribed to it in the Restrictions and Easements Agreement. Unless provided to the contrary herein, in the Restrictions and Easements Agreement or otherwise as may be permitted by this Declaration or the Restrictions and Easements Agreement, as amended from time to time, each Hotel Condominium Unit's proportionate share of the Adjoining Parcel Costs, if not otherwise directly attributable to a Hotel Condominium Unit in some other proportion or set amount, shall be in an amount equal to each such Hotel

Condominium Unit's proportionate share of the Shared Costs Allocation (defined below) as set forth on Exhibit "H" to this Declaration.

- 2.4. "Adjoining Parcel Owner" means and refers to the fee owner(s) from time to time of the Adjoining Parcel excluding, however, any owners of condominium units, if any, that may be established within the Adjoining Parcel now or in the future. The Adjoining Parcel Owner is NOT a Unit Owner (as same is defined in this Declaration) simply by virtue of owning the Adjoining Parcel, and the Adjoining Parcel is not a Unit.
- 2.5. "Allocated Interests" shall have the meaning ascribed to it in Section 5.1 below.
- 2.6. "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended from time to time.
- 2.7. "Assessment" means a share of the funds required for the payment of Common Expenses that from time to time is assessed against the Unit Owner.
- 2.8. "Association" or "Condominium Association" means the Fort Lauderdale Residences Hotel Condominium Association, Inc., a Florida not for profit corporation, the sole entity responsible for the operation of the Common Elements of the Condominium.
- 2.9. "Association Property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- 2.10. "Board" or "Board of Directors" means the board of directors, from time to time, of the Association.
- 2.11. "By-Laws" mean the By-Laws of the Association, as amended from time to time.
- 2.12. "Common Elements" mean and include:
- (a) The portions of the Condominium Property which are not included within the Units;
 - (b) An easement of support in every portion of a Unit which contributes to the support of the Condominium Building;
 - (c) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements, if any (notwithstanding, however, that all such property and installations shall be deemed Shared Components which are part of the Shared Facilities Unit, rather than part of the Common Elements);
 - (d) Ingress, egress and parking use rights in and to the Adjoining Parcel solely to the extent provided by, and in accordance with the terms and conditions of Sections 3(d) and 3(e), the Restrictions and Easements Agreement. Nothing herein shall be deemed to submit the fee title to the Adjoining Parcel to the provisions of this Declaration, nor to the terms and conditions of the Act or any rules and regulations, and same is expressly excluded from the Condominium Property and the dominion of the Association; and
 - (e) Any other parts of the Condominium Property designated as Common Elements in this Declaration.

The Condominium has been established in such a manner as to minimize the Common Elements. Most components that are typical "common elements" of a condominium have instead been designated herein as part of the Shared Components of the Shared Facilities Unit.

- 2.13. "Common Expenses" mean all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the By-Laws. For all purposes of this Declaration, "Common Expenses" shall also include, without limitation: (a) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (b) if applicable, insurance for directors and officers of the Association; (c) the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property and/or rental or other expenses owed in connection with any Units leased by the Association; and (d) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure. Common Expenses shall not include any separate obligations of individual Unit Owners, Shared Costs or Adjoining Parcel Costs including any reserves that may be assessed and collected by the Shared Facilities Unit Owner and Adjoining Parcel Owner as provided in the Condominium Documents and the Agreement.
- 2.14. "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses. All rents, profits, income and

other revenue earned or received by the Shared Facilities Unit Owner and Adjoining Parcel Owner are not Common Surplus or other revenue of the Association.

- 2.15. "Condominium Building" means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Realty.
- 2.16. "Condominium Parcel" means a Unit together with the undivided share in the Common Elements appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.17. "Condominium Property" means the Condominium Realty, Improvements and other property described in Section 1.3 hereof, subject to the limitations thereof and exclusions therefrom, including, without limitation, the ingress and egress use rights, as referenced in Section 3(d) of the Restrictions and Easements Agreement, and parking use rights, as referenced in Section 3(e) of the Restrictions and Easements Agreement, in and to the Adjoining Parcel (but not the fee title thereof) granted to Unit Owners under the Restrictions and Easements Agreement. The fee title to the Adjoining Parcel is NOT part of the Condominium Property, and nothing herein shall be deemed to grant to the Unit Owners any rights in or to the Adjoining Parcel other than as are expressly granted herein or in the Restrictions and Easements Agreement.
- 2.18. "County" means the County of Broward, State of Florida.
- 2.19. "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as same may be amended from time to time.
- 2.20. "Developer" means **Capri Resorts, LLC, a Florida limited liability corporation**, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of the Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. A Hotel Condominium Unit Owner shall not be considered, solely by virtue of purchasing a Hotel Condominium Unit, a successor or assign of Developer or of the development rights of Developer under the Condominium Documents, unless such Hotel Condominium Unit Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Developer. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board or the Association upon the transfer of control of the Association.
- 2.21. "Dispute," for purposes of Section 18.1, means any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or By-Laws to: (i) require any Unit Owner to take any action, or not to take any action, involving that Unit Owner's Unit; or (ii) alter or add to a Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; the levy of a fee or assessment or the collection of an assessment levied against a party, including Assessments, Shared Costs, Adjoining Parcel Costs and any and all other costs, charges and expenses that may be levied against a Unit Owner as provided herein, the other Condominium Documents, and the Restrictions and Easements Agreement; the eviction or other removal of a tenant from a Unit; alleged breaches of fiduciary duty by one or more Directors; claims for damages to a Unit based upon the alleged failure of the Association to maintain the Common Elements or Condominium Property; or any disagreement of whatever type or character between the Association and/or one or more Hotel Condominium Unit Owners and the Adjoining Parcel Owner whether arising out of rights and obligations described herein, in the other Condominium Documents or the Restrictions and Easements Agreement. The provisions of this subparagraph 2.21 shall apply only in the event the Condominium is a residential condominium or mixed-use condominium and not a commercial condominium.
- 2.22. "Division" means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- 2.23. "Final Plans" means those plans and specifications maintained by the Developer and identified as the final plans and specifications in a written certificate of the Developer after completion of construction.
- 2.24. "First Mortgage" means any person or entity holding a first mortgage on a Unit or Units.
- 2.25. "Hotel Condominium Unit" means and refers to each of the one hundred seventy-one (171) Hotel Condominium Units but shall not include the Shared Facilities Unit. References herein to "Units" shall include Hotel Condominium Units unless the context prohibits or it is otherwise expressly provided.

- 2.26. "Hotel Condominium Unit Owner" means and refers to the owner(s) from time to time of any Hotel Condominium Unit.
- 2.27. "Hotel Guest" means a guest, invitee or licensee occupying a room or suite located within the East Tower at any time where all or any portion of the East Tower is being operated as a hotel. Where reference is made in this Declaration to an item or service being provided "on the same basis as for Hotel Guests" or "to the extent made available to Hotel Guests" or words of similar import, this shall refer to a typical guest occupying a room in the ordinary course of any hotel business operated within all or any part of the East Tower who is not (1) part of a group, convention group or tour, (2) staying in a room located within the East Tower as part of any promotional or travel package, (3) an employee of the Adjoining Parcel Owner or Hotel Flag (as defined in the Restrictions and Easements Agreement) or either of their affiliates, (4) obtaining the benefit of any national or regional promotional or awards program, or (5) otherwise receiving discounts or benefits not generally provided other Hotel Guests then staying within the East Tower.
- 2.28. "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Realty.
- 2.29. "Initial Plans" means all plans and specifications for the Units, Shared Components, Common Elements appurtenant thereto and the Condominium Property, as amended or modified from time to time, whether or not filed with any governmental authority or delivered to third parties, together with all changes in such plans and specifications, whenever deemed necessary or desirable by Developer, or when otherwise required by any governmental authority, or when otherwise required by material shortages, drainage considerations, work stoppages or emergencies or other reasons outside the control of Developer. The Initial Plans for the Units, Shared Components, Common Elements appurtenant thereto and the Condominium Property on file with the applicable governmental authorities or in the possession of third parties may not be identical to the Initial Plans maintained and modified by the Developer from time to time, because the Developer may not have up-dated the Initial Plans in the possession of third parties or filed with governmental authorities or there may be no legal requirement to file all changes with such authorities. No purchaser of a Hotel Condominium Unit, Hotel Condominium Unit Owner, or the Association shall rely upon any version of the Initial Plans, wherever located, for any purpose whatsoever and neither the Developer nor any of its agents or employees makes any representation or warranty that all or any portion of the Units, Shared Components, Common Elements appurtenant thereto and the Condominium Property shall be completed in accordance with any version or versions of the Initial Plans wherever located.
- 2.30. "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units.
- 2.31. "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the Voting Interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.
- 2.32. "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.33. "Restrictions and Easements Agreement" shall have the meaning ascribed to it in Section 1.2 above.
- 2.34. "Shared Components." Notwithstanding anything to the contrary depicted on the survey, plot plan, and graphic description of improvements attached hereto as **Exhibit "C,"** the following components of the improvements constitute the Shared Components and shall be deemed part of the Shared Facilities Unit, whether or not graphically depicted as such on said **Exhibit "C"**: any and all structural components of the Improvements, including, without limitation, all floor slabs; all exterior block walls and all finishes (glass, paint, stucco etc.) and balconies, terraces and/or facades attached or affixed thereto; the roof; all roof trusses, roof support elements and roofing insulation; all utility, mechanical, electrical, telephonic, telecommunications, plumbing, life safety and other systems and electromechanical systems, including, without limitation, all wires, conduits, pipes, ducts (including ducts wholly contained within the boundaries of a Hotel Condominium Unit and all items whatsoever located within such ducts), transformers, cables and other apparatus used in the delivery of the utility, mechanical, telephonic, telecommunications, electrical, plumbing and/or other services; all heating, ventilating and air conditioning systems, including, without limitation, compressors, air handlers (except for any air conditioning system or part thereof located within the boundaries of a Hotel Condominium Unit which shall be a part of the Hotel Condominium Unit), chillers, water towers and other apparatus used in the delivery of HVAC services; all elevator shafts, elevator cabs, elevator cables and/or systems and/or equipment used in the operation of the elevators traversing the Condominium Property; all trash rooms, trash chutes and any and all trash collection and/or disposal systems. Notwithstanding the foregoing, all mechanical equipment located on the roof of the Condominium Building that serves any portion of

the Adjoining Parcel shall be the property of the Adjoining Parcel Owner and not Shared Components ("AP Equipment"). In addition, the Shared Components include the following areas and/or facilities contained within the Condominium Property (together with a license for reasonable pedestrian access thereto, as determined by the Shared Facilities Unit Owner): any swimming pool, whirlpool spa, sundeck, Cabana (defined below) and any other facilities that may be located from time to time within the improvements constructed upon the Shared Facilities Unit. Notwithstanding anything herein, or in any of the exhibits hereto, contained to the contrary, the Shared Components shall be deemed part of the Shared Facilities Unit. The Shared Facilities Unit Owner shall have the right (but not the obligation), by Supplemental Declaration executed by the Shared Facilities Unit Owner alone, to designate additional portions of the Shared Facilities Unit as Shared Components hereunder. Notwithstanding the designation of the Shared Components, the Shared Facilities Unit Owner shall have the right, from time to time, to expand, alter, relocate and/or eliminate the portions of the Shared Facilities Unit deemed Shared Components (provided that expansion shall not be beyond the Shared Facilities Unit), without requiring the consent or approval of the Association or any other Unit Owner, provided that any portions withdrawn are not, at the sole and absolute discretion of the Shared Facilities Unit Owner, essential to, and do not materially and adversely impact, the structural integrity of the Hotel Condominium Units, the provision of utilities and utility services to the Hotel Condominium Units, and/or the provision of legal access. In furtherance of the foregoing, the Shared Facilities Unit Owner also reserves the absolute right at any time, and from time to time, to construct additional facilities upon the Shared Facilities Unit and to determine whether same shall be deemed Shared Components. It is expressly contemplated that persons other than Unit Owners shall be granted use rights in and to certain of the facilities of the Shared Facilities Unit (such determination to be made in the sole and absolute discretion of the Shared Facilities Unit Owner) including, without limitation, use rights granted to persons other than Unit Owners in the Restrictions and Easements Agreement. Further, notwithstanding their designation as Shared Components, subject to the right of the Shared Facilities Unit Owner to regulate their uses, (i) the terraces, balconies, lanais and/or rooftop terraces directly adjacent to and serving a Hotel Condominium Unit shall be reserved for the exclusive use of the Hotel Condominium Unit afforded direct access thereto, and (ii) the Cabanas on the pool deck of the West Pedestal, if any, where a Cabana License for the use of same is given to a Hotel Condominium Unit Owner, shall be reserved for the exclusive use of the Hotel Condominium Unit to which such Cabana is licensed pursuant to the terms and conditions of this Declaration. Without limiting the generality of the foregoing, any and all food and beverage operations, and/or retail areas whether now or hereafter located upon the Shared Facilities Unit, shall expressly be excluded from the Shared Components and shall be deemed to be the exclusive property, and for the exclusive use, of the Shared Facilities Unit Owner and such persons or entities designated by the Shared Facilities Unit Owner. In the event of conflict as to whether any property, real or personal, tangible or intangible, is part of the Shared Facilities Unit or a Common Element, same shall be deemed to be part of the Shared Facilities Unit. In the event of conflict as to whether any property, real or personal, tangible or intangible, is part of the Shared Facilities Unit or the Adjoining Parcel, the provisions of preamble "D" of the Restrictions and Easements Agreement shall apply.

- 2.35. "Shared Costs" shall have the meaning given in Section 12.1 below.
- 2.36. "Shared Costs Allocation" shall have the meaning given in Section 12.3 below.
- 2.37. "Shared Facilities Unit" means and refers to Unit "SFU" (Shared Facilities Unit) as identified on **Exhibit "C"** attached hereto, which includes the Shared Components (as defined herein). References herein to "Units" shall include the Shared Facilities Unit unless the context would prohibit same or it is otherwise expressly provided.
- 2.38. "Shared Facilities Unit Owner" means and refers to the owner(s) from time to time of the Shared Facilities Unit.
- 2.39. "Voting Interests" means the Unit Owner's membership and voting rights in the Association.
- 2.40. "Unit" means a part of the Condominium Property which is subject to exclusive ownership, and except where specifically excluded, or the context otherwise requires, shall mean each of the one hundred seventy-one (171) Hotel Condominium Units and the Shared Facilities Unit.
- 2.41. "Unit Owner" or "Owner of a Unit" means a record owner of legal title to a Unit.

3. Description of Condominium.

- 3.1. **Identification of Units.** The Condominium consists of the Condominium Realty and the West Tower. The "West Tower" is a nineteen (19) story building containing one hundred seventy-two (172) Units, consisting of one hundred seventy-one (171) Hotel Condominium Units, one (1) Shared Facilities Unit, portions of which Shared Facilities Unit are located upon the fifth floors of the Central Pedestal and West Pedestal described below. The "Central Pedestal" building supports the West Tower and is comprised of portions of the Adjoining Parcel, as more fully described in the Restrictions and Easements Agreement, and a portion of the Shared Facilities Unit. The portion of the Shared Facilities Unit located within the Central Pedestal contains terraces on the fifth floor of the Central Pedestal that are reserved exclusively for the Hotel Condominium Units located adjacent thereto. The "West Pedestal" building also supports the West Tower and is

comprised of portions of the Adjoining Parcel, as more fully described in the Restrictions and Easements Agreement, and a portion of the Shared Facilities Unit. The portion of the Shared Facilities Unit located within the West Pedestal contains the open-air deck on the fifth floor of the West Pedestal which will contain terraces that are reserved exclusively for the Hotel Condominium Units located adjacent thereto, a pool, whirlpool, cabanas (which, if constructed, may be reserved for the exclusive use of certain Hotel Condominium Units), restrooms, and other improvements. While the Adjoining Parcel does not constitute any part of the Condominium Property, the use and easement rights in the Adjoining Parcel granted to the Condominium and Unit Owners as described herein and the Restrictions and Easements Agreement do constitute a part of the Condominium Property.

Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Units is set forth on **Exhibit "C"** attached hereto, which **Exhibit "C"** consists of a survey of the Condominium Realty, a graphic description of the Improvements located thereon, including, but not limited to the Hotel Condominium Units, the Shared Facilities Unit and the Common Elements, and a plot plan thereof. Said **Exhibit "C,"** together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that, except as to the Shared Facilities Unit Owner, an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.

3.2. Unit Boundaries. Each Unit shall include the following boundaries:

- (a) Boundaries of Hotel Condominium Units. The upper and lower boundaries of each Hotel Condominium Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
 - (i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the upper story if the Hotel Condominium Unit is a multi-story Hotel Condominium Unit, provided that in multi-story Hotel Condominium Units where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling);
 - (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Hotel Condominium Unit (which will be deemed to be the floor of the first story if the Unit is a multi-story Hotel Condominium Unit, provided that in multi-story Hotel Condominium Units where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor);
 - (iii) Interior Divisions. Except as provided in subsections 3.2(a)(i) and 3.2(a)(ii) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the multi-floors, in all cases of a multi-story Unit, if any, or nonstructural interior walls shall be considered a boundary of the Hotel Condominium Unit; and
 - (iv) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries. Notwithstanding the foregoing, as to walls shared by a Hotel Condominium Unit and the Shared Facilities Unit, the perimetrical boundary of the Shared Facilities Unit at such shared wall shall be coextensive to the perimetrical boundary of the adjoining Hotel Condominium Unit (so that the shared wall and all installations therein, which are deemed part of the Shared Components, shall be part of the Shared Facilities Unit rather than the Common Elements or the Hotel Condominium Unit; and, therefore, the perimetrical boundary of the Shared Facilities Unit shall extend to the unfinished interior surface of any walls bounding a Hotel Condominium Unit).
- (b) Boundaries of Shared Facilities Unit. The Shared Facilities Unit shall consist of all of the Condominium Property, including, without limitation, any and all Improvements now or hereafter constructed thereon, less and except only the following: (i) the Hotel Condominium Units, and (ii) any Common Elements;
- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, all of same shall be deemed part of the Shared Components, and as such, part of the Shared Facilities Unit; and

- (d) **Exceptions.** In cases not specifically covered above, and/or in any case of conflict or ambiguity, the Final Plans shall control in determining the boundaries of a Unit, except that the provisions of Section (b) above defining the boundaries of the Shared Facilities Unit shall control unless specifically depicted and labeled otherwise on such survey. In the event of conflict as to what constitutes a Common Element versus the Shared Facilities Unit or the Shared Facilities Unit versus the Adjoining Parcel, the provisions of Section 2.3.2 shall control.
- 3.3. **Parking Spaces.** All of the parking spaces are located within the Adjoining Parcel and are not part of the Condominium Property and are subject to the Restrictions and Easements Agreement, and shall be subject to the procedures and regulations established from time to time under the Restrictions and Easements Agreement.
- 3.4. **Easements.** The following easements are hereby created (in addition to any easements created under the Act and any easements affecting the Condominium Property and recorded in the Public Records of the County):
- (a) **Support.** Each Unit and any structure and/or improvement now or hereafter constructed upon the Condominium Property and/or the Adjoining Parcel shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements and such other improvements constructed upon the Condominium Property;
- (b) **Utility and Other Services; Drainage.** Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, television, communications and monitoring systems, and other services and drainage in order to serve the Condominium Property and/or members of the Association and/or the Adjoining Parcel. A Hotel Condominium Unit Owner shall do nothing within or outside his Hotel Condominium Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, television, communications and security systems, or other service or drainage facilities or the use of these easements. The Association and Shared Facilities Unit Owner shall have a right of access to each Hotel Condominium Unit to maintain, repair or replace any Common Element, if any, or Shared Component pipes, wires, ducts, vents, cables, conduits and other utility, television, communications and similar systems, hot water heaters, and service and drainage facilities, contained within the Hotel Condominium Unit or elsewhere in or around the Condominium Property, to remove any Improvements interfering with or impairing such facilities or easements herein reserved, and to provide access to a Hotel Condominium Unit for the purpose of inspection by any governmental agency having jurisdiction and authority to inspect the Hotel Condominium Unit for any purpose whatsoever; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Hotel Condominium Unit Owner's permitted use of the Hotel Condominium Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Hotel Condominium Unit Owner is absent when the giving of notice is attempted);
- (c) **Encroachments.** If (i) any portion of the Common Elements and/or Shared Components encroaches upon any Hotel Condominium Unit; (ii) any Hotel Condominium Unit encroaches upon any other Hotel Condominium Unit or upon any portion of the Common Elements and/or Shared Components; (iii) any "improvements" of or upon the Adjoining Parcel encroach upon the Condominium Property; or (iv) any encroachment shall hereafter occur as a result of (1) construction of the Improvements; (2) settling or shifting of the Improvements; (3) any alteration or repair to the Common Elements (or the Shared Components) made by or with the consent of the Association or Developer or the Shared Facilities Unit Owner, as appropriate; or (4) any repair or restoration of the Improvements (or any portion thereof) or any Hotel Condominium Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Hotel Condominium Unit or the Common Elements or the Shared Components, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand;
- (d) **Ingress and Egress.** A non-exclusive easement in favor of each Hotel Condominium Unit Owner and occupant, their guests and invitees shall exist for (i) pedestrian traffic over, through and across such portions of the Shared Facilities Unit as are designated by the Shared Facilities Unit Owner and intended to provide direct pedestrian access to and from the applicable Hotel Condominium Unit, and the public right-of-way adjacent to the Condominium Property, and (ii) use and enjoyment of the Shared Components, subject to regulation as may be established from time to time by the Shared Facilities Unit Owner. **Notwithstanding the foregoing, the aforesaid easement over the Shared Facilities Unit is limited and solely for the use of the Hotel Condominium Unit Owners (and their guests, tenants and invitees) obtaining access to and from their Hotel Condominium Units and shall not be used by the Hotel Condominium Unit Owners (and their guests, tenants and invitees) for the provision of any services, and any hotel services including, but not limited to, solicitation and/or provision of maid and**

housekeeping daily cleaning service, personal services (i.e., massage, personal training, dry cleaning, pet care, etc.) and/or room service or other food and beverage service, it being understood and agreed by all Unit Owners that any such services may only be provided by the Shared Facilities Unit Owner or the designee of same. The provisions of this section 3.4(d) may not be amended without an affirmative vote of not less than four-fifths (4/5ths) of all Voting Interests of all Hotel Condominium Unit Owners and the consent of the Shared Facilities Unit Owner. **EACH HOTEL CONDOMINIUM UNIT OWNER, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS, WHETHER OR NOT IT SHALL BE SO EXPRESSED IN ANY SUCH DEED OR OTHER CONVEYANCE, ACCEPTS THE EASEMENTS AND USE RIGHTS IN AND TO THE SHARED FACILITIES UNIT AND SHARED COMPONENTS IN THEIR "AS IS" "WHERE IS" CONDITION WITH ALL FAULTS, WITHOUT ANY REPRESENTATION OR WARRANTY WITH RESPECT TO SUCH EASEMENTS AND USE RIGHTS IN AND TO THE SHARED FACILITIES UNIT AND SHARED COMPONENTS;**

- (e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) and the Shared Facilities Unit Owner shall have the right, in its (and their) sole and absolute discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction of any and all improvements upon any portion of the Condominium Property, or any part thereof and/or any improvements located or to be located upon the Adjoining Parcel (for so long as any portion of same is owned by Developer or any affiliates thereof) and for repair, replacement and maintenance or warranty purposes or where the Developer and/or Shared Facilities Unit Owner, in its or their sole and absolute discretion, determines that it is required or desires to do so;
- (f) Sales Activity. For as long as there are any Units owned by the Developer and/or the Developer or its affiliates have any ownership interest in the Shared Facilities Unit, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property for guest accommodations, model units and sales, leasing and construction offices relating to the Condominium, to show Units and the Common Elements to prospective purchasers and tenants of Units, and to erect on the Shared Facilities Unit, Condominium Property and/or Association Property signs and other promotional material to advertise or otherwise market the Units, and/or any facilities built or to be constructed upon any portion of the Condominium Property for sale, lease or occupancy;
- (g) Roof, Exterior Painting and Window Washing. A non-exclusive easement is hereby reserved over and across each Hotel Condominium Unit and the Common Elements appurtenant thereto for the Shared Facilities Unit Owner, Adjoining Parcel Owner and/or Association, as applicable, (and the personnel, employees and/or contractors of the Shared Facilities Unit Owner and/or Association) to stage and perform exterior window washing, exterior painting of the Condominium Building, maintenance, repair, replacement or alteration of any mechanical equipment located or accessible from the roof of the Condominium Building and/or other exterior repairs, replacements, alterations and/or maintenance (preventative or otherwise) and a non-exclusive easement is hereby reserved over and across each Hotel Condominium Unit, the Shared Facilities Unit and the Common Elements appurtenant thereto for the Adjoining Parcel Owner (and the personnel, employees and/or contractors of the Adjoining Parcel Owner for the maintenance, repair, replacement or alteration of the AP Equipment;
- (h) Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to the West Tower and/or any improvements constructed upon or under the Condominium Property, then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjoining structures which are necessarily or conveniently located within the Condominium Property and/or the Association Property;
- (i) Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for act or omission of Developer in the development, construction, sale, resale, leasing, financing, and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole and absolute discretion and from time to time and without requiring prior approval of the Association and/or any Unit Owner and without requiring any consideration to be paid by the Developer to the Unit Owners and/or Condominium Association (provided, however, that absent an emergency situation, Developer shall provide reasonable advance notice), to enter the Condominium Property, including the Units and/or Common Elements for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. The failure of the Association or any Unit Owner to grant such access, or any interference with such access by the Association or any Unit Owner, shall alleviate the Developer from having to fulfill its warranty obligations and the costs, expenses, liabilities and damages arising out of any unfulfilled Developer

warranty will be the sole obligation and liability of the person or entity who or which impedes the Developer in any way in Developer's activities described in this subsection 3.4(i). **THE EASEMENTS RESERVED IN THIS SECTION SHALL EXPRESSLY SURVIVE THE TRANSFER OF CONTROL OF THE ASSOCIATION TO UNIT OWNERS OTHER THAN THE DEVELOPER AND THE ISSUANCE OF ANY CERTIFICATES OF OCCUPANCY FOR THE CONDOMINIUM PROPERTY (OR PORTIONS THEREOF). NOTHING HEREIN SHALL BE DEEMED OR CONSTRUED AS THE DEVELOPER MAKING OR OFFERING ANY WARRANTY, ALL OF WHICH ARE DISCLAIMED;**

- (j) Hotel Services. The Shared Facilities Unit Owner grants a non-exclusive easement over and across the Shared Facilities Unit for the benefit of the Adjoining Parcel Owner and its designees to provide hotel services, including but not limited to, maid and housekeeping daily cleaning service, room service and other food and beverage service, telephone central switchboard system service, television/movie service, as well as concierge and personal services (such as dry cleaning, personal training, in-room massage and pet care services, if available); and
- (k) Additional Easements. The Association, through its Board, on the Association's behalf and on behalf of all Hotel Condominium Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property and/or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for their intended purposes and provided further that if any such easement affects the Shared Facilities Unit Owner in any way whatsoever, the written joinder and consent of the Shared Facilities Unit Owner in such easement must be obtained, which consent may be granted or withheld in the sole and absolute discretion of the Shared Facilities Unit Owner. Further, the Shared Facilities Unit Owner shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, television, security systems, communications, services, or any other types of easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Shared Facilities Unit Owner shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or materially and adversely interfere with the reasonable use of the Hotel Condominium Units for their intended purposes as determined in the sole and absolute discretion of the Shared Facilities Unit Owner.

3.5. Cabanas:

- (a) Cabana Licenses. The Shared Facilities Unit Owner shall have the right to establish and create cabanas (each, a "Cabana") for use of Hotel Condominium Unit Owners, which Cabanas are or may be located upon such areas of the Shared Facilities Unit as determined by the Shared Facilities Unit Owner. Shared Facilities Unit Owner shall have, and hereby reserves, the exclusive right at any time, and from time to time, to issue licenses for consideration to specific Hotel Condominium Unit Owners, or others, to use one or more of the Cabanas, or a portion thereof, in the areas designated by the Shared Facilities Unit Owner. A license of a Cabana shall be made by Shared Facilities Unit Owner in writing in a form established by the Shared Facilities Unit Owner ("Cabana License") which Cabana License shall not be recorded in the Public Records. The license of a Cabana shall be effectuated by the Shared Facilities Unit Owner by placing a copy of the executed Cabana License in a book ("Cabana Book") which the Shared Facilities Unit Owner shall maintain. The Cabana License shall grant the Hotel Condominium Unit Owner with an exclusive license to use (but not title to) such Cabana during any period of time within which the Hotel Condominium Unit Owner owns a Hotel Condominium Unit. The Cabana License shall automatically terminate upon the earlier of (i) transfer of all Hotel Condominium Units owned by a Hotel Condominium Unit Owner or (ii) the transfer of the Cabana License by the Hotel Condominium Unit Owner, subject to the provisions of Section 3.5(g) below. After Shared Facilities Unit Owner issues a Cabana License to a Hotel Condominium Unit Owner, a Hotel Condominium Unit Owner may thereafter, subject to the Right of First Refusal described below, transfer the Cabana License only to another Hotel Condominium Unit Owner with

or without consideration by written instrument (in a form from time to time established and approved by the Shared Facilities Unit Owner) delivered to the Shared Facilities Unit Owner and entered into the Cabana Book in accordance with the foregoing; provided, however, that any such Cabana License transfer must occur prior to or simultaneously with the time that the Hotel Condominium Unit Owner conveys the last Hotel Condominium Unit owned by such Hotel Condominium Unit Owner (because absent any prior written approval by the Shared Facilities Unit Owner, the Cabana License shall be deemed automatically terminated upon the transfer of all Hotel Condominium Units owned by a Hotel Condominium Unit Owner). No such assignment of the Cabana License shall be effective until the Shared Facilities Unit Owner has acknowledged receipt and approved the transfer in writing and recorded same in the Cabana Book. The Shared Facilities Unit Owner, in its sole and absolute discretion, may determine the use or disposition of any Cabana not licensed to a Hotel Condominium Unit Owner so long as its use is otherwise in compliance with the terms of this Declaration; subject, however, to the Shared Facilities Unit Owner's right to allow use of a Cabana by a non-Unit Owner.

- (b) Cabana Fees. All fees and charges collected by the Shared Facilities Unit Owner, including any additional consideration paid by a Hotel Condominium Unit Owner, shall be retained exclusively by the Shared Facilities Unit Owner.
- (c) Cabana Regulations. The Shared Facilities Unit Owner is hereby empowered to establish from time to time regulations relative to the Cabanas; provided, however, that anything herein contained to the contrary, no such regulation may, directly or indirectly, impair, diminish or otherwise interfere with Shared Facilities Unit Owner's exclusive right to license Cabanas and/or to collect all fees or other consideration resulting therefrom. The Shared Facilities Unit Owner may suspend any Hotel Condominium Unit Owner's right to use his or her Cabana during any period when any of the Shared Costs of the Hotel Condominium Unit Owner is delinquent or when the Hotel Condominium Unit Owner is otherwise in violation of any rules and regulations established for use of the Cabanas, and the Shared Facilities Unit Owner may by written notice provided to the Hotel Condominium Unit Owner and recorded in the Cabana Book, in addition to other remedies provided to the Shared Facilities Unit Owner hereunder as to nonpayment by a Hotel Condominium Unit Owner of sums due to it, revoke the Cabana License in the event such payment delinquency or breach continues for a period of ninety (90) days after written notice to the Hotel Condominium Unit Owner.
- (d) Maintenance and Insurance. Notwithstanding that Cabanas are licensed to a Hotel Condominium Unit Owner, the Shared Facilities Unit Owner shall maintain, manage, operate, repair and replace the Cabanas, and the Shared Facilities Unit Owner is hereby reserved an easement for such purposes, the cost of which shall be determined by the Shared Facilities Unit Owner in its sole and absolute discretion and shall be a part of the expense of the Hotel Condominium Unit Owner payable to the Shared Facilities Unit Owner as an additional fee, except as limited in Section 3.5(e) below.
- (e) Limitation on Maintenance and Insurance. Notwithstanding the Shared Facilities Unit Owner's obligation to maintain the Cabanas, each Hotel Condominium Unit Owner shall maintain and insure the contents placed in that Hotel Condominium Unit Owner's Cabana which shall be placed there at their own risk.
- (f) Access by Shared Facilities Unit Owner. In order to facilitate access to Cabanas by the Shared Facilities Unit Owner, it shall be the responsibility of all Hotel Condominium Unit Owners who have a Cabana License to deliver to the Shared Facilities Unit Owner a set of codes or keys to their respective Cabana, if any, to use in the performance of its functions. No Hotel Condominium Unit Owner shall change the codes or locks to his or her Cabana without so notifying the Shared Facilities Unit Owner and delivering to the Shared Facilities Unit Owner a new set of codes or keys to such Cabana.
- (g) Right of First Refusal to Shared Facilities Unit Owner Upon Resale.
 - (i) In the event any Hotel Condominium Unit Owner wishes to sell or transfer his Cabana License to another Hotel Condominium Unit Owner, the Shared Facilities Unit Owner shall have the first option to purchase Hotel Condominium Unit Owner's rights and interest in the Cabana and the Cabana License by the payment of the lesser of (1) seventy percent (70%) of the original amount paid for the Cabana License whether from the Developer, Shared Facilities Unit Owner or another Hotel Condominium Unit Owner, or (2) if no sum was allocated, then (a) the sales price set by the selling Hotel Condominium Unit Owner for the Hotel Condominium Unit Owner's rights and interest in the Cabana and Cabana License to a third party although no third party buyer has yet been identified or (b) the agreed upon price between the selling Hotel Condominium Unit Owner and a prospective bona fide purchaser pending the right of first refusal by the Shared Facilities Unit Owner ("Right of First Refusal"). Any attempt to sell or transfer said Cabana License without having first offered the Cabana License to the Shared Facilities Unit Owner shall be

deemed a breach of this Declaration, shall be wholly null and void, and shall confer no title or interest whatsoever upon any purchaser or transferee of the Cabana License.

- (ii) Should a Hotel Condominium Unit Owner wish to sell or transfer his Cabana License, he shall deliver to the Shared Facilities Unit Owner a written notice, which written notice shall include the information listed in subparagraph 3.5(g)(i) above (including proof of the purchase price of the Cabana License by the Hotel Condominium Unit Owner) and the terms of, or a copy of, any proposed contract for the sale or transfer of the Cabana License, of such request and the Hotel Condominium Unit Owner shall also submit to the Shared Facilities Unit Owner, within five (5) days from receipt of any request by the Shared Facilities Unit Owner, any supplemental information as may be required by the Shared Facilities Unit Owner including the terms of any such sale or transfer.
- (iii) The Shared Facilities Unit Owner, within forty-five (45) days after receiving such notice and such supplemental information as is required by the Shared Facilities Unit Owner, shall either exercise its Right of First Refusal to purchase Hotel Condominium Unit Owner's interest in the Cabana or waive its Right of First Refusal, by delivering written notice ("Notice") to the Hotel Condominium Unit Owner at the address designated by the Hotel Condominium Unit Owner in his notice.
- (iv) The Shared Facilities Unit Owner shall have fifteen (15) days from the date of the Notice sent by the Shared Facilities Unit Owner exercising its Right of First Refusal within which to make a binding offer to purchase Hotel Condominium Unit Owner's interest in the Cabana and tender the applicable consideration and simultaneously therewith, the holder of the Cabana License shall transfer the Cabana License to the Shared Facilities Unit Owner.
- (v) Subject to the Cabana License termination provision upon transfer of all Hotel Condominium Units by a Hotel Condominium Unit Owner, the foregoing provisions of this Section 3.5(g) shall not apply to a transfer of a Cabana License for no consideration by a Hotel Condominium Unit Owner to any member of his immediate family (*i.e.*, spouse, children or parents).
- (vi) Anything in this Section 3.5(g) to the contrary notwithstanding, the Shared Facilities Unit Owner may, in its sole and absolute discretion, waive its Right of First Refusal to purchase any Cabana License. Any such waiver by the Shared Facilities Unit Owner must be in writing to be binding upon the Shared Facilities Unit Owner.
- (h) The provisions of this Section 3.5 shall not be amended without the affirmative vote of at least four-fifths (4/5) of the total Voting Interests of all Unit Owners and the consent of the Shared Facilities Unit Owner.

4. Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

5. Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.

5.1. Percentage Ownership and Shares. The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit, is as set forth on **Exhibit "D"** attached hereto (the "**Allocated Interests**"). Each Unit's percentage share of ownership of the Common Elements, percentage share of Common Surplus to which each Unit is entitled and the percentage share of Common Expenses which each Unit Owner will bear was devised by dividing the approximate area (in square feet) for each Unit by the total approximate area (in square feet) of all Units in the Condominium. For the purpose of determining each Unit's percentage share of costs and expenses, the approximate area of each Hotel Condominium Unit was determined by measuring to the interior face of the unfinished surface of the exterior perimeter walls and to the interior face of the unfinished surface of the interior perimeter walls of each Hotel Condominium Unit. The approximate area of the Shared Facilities Unit was calculated by taking the total square footage of the West Tower (measured from the exterior face from all exterior walls, balconies and terrace slabs) less the total square footage of all Hotel Condominium Units. All percentage shares for the Units were then adjusted to assure that they equal precisely one hundred percent (100%).

- 5.2. **Voting Rights.** Each Hotel Condominium Unit shall be entitled to one (1) vote that is to be cast by Hotel Condominium Unit Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. The Shared Facilities Unit shall be entitled to seventy-one (71) votes that are to be cast by the Shared Facilities Unit Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. Each Unit Owner shall be a member of the Association.
6. **Amendments.** Except as elsewhere provided herein, amendments may be effected as follows:
- 6.1. **By the Association.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than a majority of the Unit Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing not less than eighty percent (80%) of the Voting Interests of all Unit Owners and the consent of the Shared Facilities Unit Owner. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting.
- 6.2. **Material Amendments.** Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, permit timeshare estates, change the percentage by which the owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus or change the use of the Condominium as a licensed facility available for transient usage (any such change or alteration being a "**Material Amendment**"), unless the record owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by not less than four-fifths (4/5ths) of the total Voting Interests of all Unit Owners and the consent of the Shared Facilities Unit Owner. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.
- 6.3. **Mortgagee's Consent.** No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units without the consent of said mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance," "Reconstruction or Repair after Casualty," or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld, conditioned or delayed. If any proposed amendment impacts the rights of the Shared Facilities Unit Owner or the Shared Facilities Unit is encumbered by a mortgage or mortgages, then such amendment shall also require consent by such mortgagee or mortgagees.
- 6.4. **By the Developer.** Notwithstanding anything herein contained to the contrary, during the time the Developer has the right to elect a majority of the Board of Directors of the Association, the Declaration, the Articles of Incorporation or the By-Laws of the Association may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment: (a) to permit timeshare estates (which must be approved, if at all, in the manner provided in Section 6.2 above); or (b) to effect a "Material Amendment," which must be approved, if at all, in the manner set forth in Section 6.2 above. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, without the consent of the Developer in each instance.
- 6.5. **Execution and Recording.** An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, certifying such amendment has been adopted as provided herein and executed either by the President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision. . . for present text." Nonmaterial

errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

- 6.6. Affecting the Shared Facilities Unit. Anything herein to the contrary notwithstanding, no amendment to this Declaration or the Articles of Incorporation, By-Laws, (attached hereto as **Exhibit "F"**) or Rules and Regulations of the Association affecting the Shared Facilities Unit or Shared Facilities Unit Owner in any way whatsoever shall be effective without the consent of and joinder by the Shared Facilities Unit Owner and the consent of the holders of all mortgages upon the Shared Facilities Unit if required pursuant to Section 6.3 hereof or by the provisions of any loan documents by and between the Shared Facilities Unit Owner and the holder of any mortgage upon the Shared Facilities Unit. The Shared Facilities Unit Owner may adopt rules and regulations relating to the use of the Shared Facilities Unit in addition to any rules and regulations promulgated by the Association affecting the Hotel Condominium Units, Common Elements or other Association Property. The provisions of this Section 6.6 shall not be amended without an affirmative vote of not less than four-fifths (4/5ths) of the Voting Interests of all Unit Owners, the consent of the Shared Facilities Unit Owner, and the consent of the holders of all mortgages upon the Shared Facilities Unit.

7. Maintenance and Repairs.

- 7.1. Hotel Condominium Units. All maintenance, repairs and replacements of, in or to any Hotel Condominium Unit, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, maintenance repair and replacement of window coverings, interior nonstructural walls, the interior side of the entrance door and all other doors within or affording access to a Hotel Condominium Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Hotel Condominium Unit lying within the boundaries of the Hotel Condominium Unit or other property belonging to the Hotel Condominium Unit Owner, shall be performed by the Hotel Condominium Unit Owner at the Hotel Condominium Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.
- 7.2. Common Elements and Association Property. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements and Association Property shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Hotel Condominium Unit Owners, in which case such cost and expense shall be paid solely by such Hotel Condominium Unit Owners.
- 7.3. Shared Facilities Unit. The Shared Facilities Unit Owner shall repair, replace, improve, maintain, manage, operate, and insure the Shared Facilities Unit, all of which shall be performed in a commercially reasonable manner in the sole determination of the Shared Facilities Unit Owner (which determination shall be binding). In consideration of the reservation and grant of easement over the Shared Facilities Unit, as provided in Section 3.4(d) above, and the other benefits accruing to the Hotel Condominium Units by virtue of the Shared Facilities Unit as provided in this Declaration, each Hotel Condominium Unit Owner shall be obligated for payment of the expenses incurred by the Shared Facilities Unit Owner in connection with such maintenance, repair, replacement, improvement, management, operation, and insurance, all as more particularly provided in Section 12 below.
- 7.4. Specific Hotel Condominium Unit Owner Responsibility. The obligation to maintain and repair any air conditioning equipment, plumbing or electrical fixtures or other items of property which service a particular Hotel Condominium Unit and not any other Hotel Condominium Unit shall, to the extent not part of the Shared Components or Common Elements but otherwise part of the Condominium Property, be the responsibility of the applicable Hotel Condominium Unit Owner, individually, without regard to whether such items are included within the boundaries of the Hotel Condominium Units. Prior to undertaking any maintenance, repair or replacement of any of the foregoing, the Hotel Condominium Unit Owner shall notify the Shared Facilities Unit Owner in writing of the intended maintenance, repair or replacement and the reasons therefor, and the Shared Facilities Unit Owner must approve same, in writing, prior to the time such work is commenced. If the Shared Facilities Unit Owner fails to approve such work within ten (10) business days of the Hotel Condominium Unit Owner's notification, such approval shall be deemed to have been given and the Hotel Condominium Unit Owner may proceed with the work. However, a Hotel Condominium Unit Owner shall be required to use a contractor who has first been approved by the Shared Facilities Unit Owner. In the event of an emergency whereby material damage to person or property is imminent and the Hotel Condominium Unit Owner is unable to timely obtain the prior written consent of the Shared Facilities Unit Owner, after having first made a good faith effort to do so, a Hotel Condominium Unit Owner may hire a licensed and bonded contractor to perform such work without the prior written consent of the Shared Facilities Unit Owner. In no event shall any work damage any portion of the Shared Components.
- 7.5. Mitigation of Dampness and Humidity. No Hotel Condominium Unit Owner shall install, within his or her Hotel Condominium Unit or elsewhere, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture, and or shelving in a Hotel

Condominium Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. All Hotel Condominium Unit Owners, whether or not occupying the Hotel Condominium Unit, shall cause or direct for the air conditioning system to be run periodically in order to maintain the Hotel Condominium Unit temperature, whether or not occupied, at a maximum of 78°F, to minimize humidity in the Hotel Condominium Unit. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Hotel Condominium Unit Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. **THE DEVELOPER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE EXISTENCE OR DEVELOPMENT OF MOLDS OR MYCOTOXINS AND EACH HOTEL CONDOMINIUM UNIT OWNER SHALL BE DEEMED TO WAIVE AND EXPRESSLY RELEASE ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM THE EXISTENCE AND/OR DEVELOPMENT OF SAME. SEE ALSO SECTION 22 BELOW.** Further, given the climate and humid conditions in South Florida, molds and fungus may exist and/or develop within the Condominium Property. Each Hotel Condominium Unit Owner is hereby advised that certain molds may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By closing, each Hotel Condominium Unit Owner shall be deemed to have assumed the risks associated with molds and/or fungi and to have released the Developer from any and all liability resulting from same. In furtherance of the rights of the Shared Facilities Unit Owner as set forth in this Declaration, in the event that the Shared Facilities Unit Owner reasonably believes that these provisions are not being complied with, then, the Shared Facilities Unit Owner shall have the right (but not the obligation) (and is hereby granted an easement) to enter the Hotel Condominium Unit (without requiring the consent of the Hotel Condominium Unit Owner or any other party) to turn on the air conditioning in an effort to cause the temperature of the Hotel Condominium Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Hotel Condominium Unit Owner). To the extent that electric service is not then available to the Hotel Condominium Unit, the Shared Facilities Unit Owner shall have the further right, but not the obligation (without requiring the consent of the Hotel Condominium Unit Owner or any other party) to connect electric service to the Hotel Condominium Unit (with the costs thereof to be borne by the Hotel Condominium Unit Owner, or if advanced by the Shared Facilities Unit Owner, to be promptly reimbursed by the Hotel Condominium Unit Owner to the Shared Facilities Unit Owner, with all such costs to be deemed charges).

8. Additions, Alterations or Improvements by Hotel Condominium Unit Owner.

- 8.1. Consent of the Board of Directors, Shared Facilities Unit Owner and/or Developer. No Hotel Condominium Unit Owner (other than the Developer) shall make any addition, alteration or improvement in or to the Common Elements, the Association Property or his Hotel Condominium Unit without the prior written consent of the Board of Directors. The Board shall have the obligation to answer, in writing, any written request by a Hotel Condominium Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's denial. The Board may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor to perform the work. The proposed additions, alterations and improvements by the Hotel Condominium Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board of Directors, such approval may not be revoked. Further, and notwithstanding anything herein to the contrary, no alteration, addition or modification may in any manner affect the Shared Facilities Unit or any portion of the Shared Components, without the prior written consent of the Shared Facilities Unit Owner (which consent may be withheld in its sole and absolute discretion) and any such alteration, addition or modification performed without the prior written consent of the Shared Facilities Unit Owner shall, at the election of the Shared Facilities Unit Owner be immediately removed and/or restored to original condition and the Hotel Condominium Unit Owner shall pay for same. A Hotel Condominium Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Hotel Condominium Unit Owner, and such Hotel Condominium Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, the Shared Facilities Unit Owner, all other Hotel Condominium Unit Owners, and the Excluded Parties (defined below) harmless from and to indemnify them for any liability or damage to the Condominium Property, Association Property, the Shared Facilities Unit, the Shared Components, and the Adjoining Parcel and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof and shall perform or purchase all of the same. The Association's and Shared Facilities Unit Owner's rights of review and approval of plans and other submissions under this Declaration as to the matters described in this subparagraph 8.1 are intended solely for the benefit of the Association and the Shared Facilities Unit Owner, as applicable. Neither the Developer, the Association, the Shared Facilities Unit Owner, nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Hotel Condominium Unit Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or

disapproval of any plans or submissions pursuant to this subparagraph 8.1. Anyone submitting plans hereunder, by the submission of same, and any Hotel Condominium Unit Owner, by acquiring title to same, agrees not to seek damages from the Developer, the Association and/or the Shared Facilities Unit Owner arising out of the Association's or the Shared Facilities Unit Owner's review of any plans under this subparagraph 8.1. Without limiting the generality of the foregoing, the Association and Shared Facilities Unit Owner shall not be responsible for reviewing, nor shall its review of any plans under this subparagraph 8.1 be deemed approval of, any plans under this subparagraph 8.1 from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Hotel Condominium Unit Owner (including the successors and assigns) agrees to indemnify and hold the Developer, the Association, the Shared Facilities Unit Owner and the Excluded Parties harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans under this subparagraph 8.1. The foregoing provisions requiring approval shall not be applicable to the Shared Facilities Unit and/or to any Hotel Condominium Unit owned by the Developer. The provisions of this Section 8.1 shall not be amended without an affirmative vote of not less than four-fifths (4/5ths) of the Voting Interests of all Hotel Condominium Unit Owners and the consent of the Shared Facilities Unit Owner.

- 8.2. Improvements, Additions or Alterations by Developer or to the Shared Facilities Unit. Anything herein to the contrary notwithstanding, the foregoing restrictions of this Section 8 shall not apply to any Hotel Condominium Units owned by the Developer or to the Shared Facilities Unit. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Hotel Condominium Unit Owners, but without obligation, to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Units owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), and (b) expand, alter or add to all or any part of the condominium recreational facilities. Similarly, the Shared Facilities Unit Owner shall have the additional right, without the consent or approval of the Board of Directors or Hotel Condominium Unit Owners, but without obligation, to make alterations, additions or improvements, structural and nonstructural, interior and exterior, ordinary and extraordinary, in, to and upon the Shared Facilities Unit (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Shared Facilities Unit), and to expand, diminish, alter or add to all or any part of the recreational facilities contained within the Shared Facilities Unit. Any amendment to the Declaration required by a change made pursuant to this Section 8.2 shall be adopted in accordance with Section 6; provided, however, that the exercise of any right by Developer or the Shared Facilities Unit Owner pursuant to this Section 8.2 shall not be deemed a Material Amendment.

9. Operation of the Condominium by the Association: Powers and Duties.

- 9.1. Powers and Duties. The Association shall be the entity responsible for the operation of the Common Elements and the Association Property, but not the Shared Components or any other part of the Shared Facilities Unit. The right to exercise the following powers and duties may not be exclusive to the Association and may also be granted to the Shared Facilities Unit Owner and/or Adjoining Parcel Owner as provided herein and in the Restrictions and Easements Agreement. The powers and duties of the Association shall include those set forth in the Articles of Incorporation and By-Laws of the Association (which Articles and By-Laws are attached hereto as Exhibit "E" and Exhibit "F," respectively) as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right to have access to each Hotel Condominium Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements or any portion of a Hotel Condominium Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units, including the Shared Facilities Unit;
- (b) The power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and Association Property;
- (c) The power to act as the collection agent on behalf, and at the request, of the Shared Facilities Unit Owner and/or Adjoining Parcel Owner for charges due same from the Hotel Condominium Unit Owners, provided, however, that any charges so collected shall not be deemed to be Assessments or Common Expenses hereunder, and the power to act as the collection agent on behalf, and at the request, of the Adjoining Parcel Owner for the Flag Special Assessments (defined in Section 7(b)(iii) of the Restrictions and Easements Agreement) and charges and fees due same and the Flag Special Assessments from the Hotel Condominium Unit Owners, provided, however, that any charges so collected shall not be deemed to be Assessments or Common Expenses hereunder;

- (d) The duty to maintain accounting records of the Association according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request;
- (e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and two-thirds of the Voting Interests of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing;
- (f) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Common Elements and Association Property;
- (g) The power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors, unless the cost thereof exceeds Twenty-five Thousand Dollars (\$25,000.00) (which amount shall be adjusted annually, beginning with the year of recording of this Declaration, by the United States Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (1982-84 = 100) ("CPI"), or any successor index thereto as appropriately adjusted) in which event the acquisition shall require an affirmative vote of not less than seventy-five percent (75%) of the Voting Interests of all Unit Owners. Real property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors alone and an affirmative vote of not less than seventy-five percent (75%) of the Voting Interests of all Unit Owners; provided, however, that the acquisition of any Hotel Condominium Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same and the Association, through its Board, has the power to hold, lease, mortgage or convey the acquired Hotel Condominium Unit(s) without requiring the consent of Hotel Condominium Unit Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses;
- (h) Except when otherwise granted to the Developer, Shared Facilities Unit Owner and/or Adjoining Parcel Owner in any of the Condominium Documents or Restrictions and Easements Agreement, the power to execute all documents or consents, on behalf of all Hotel Condominium Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Hotel Condominium Unit Owner, by acceptance of the deed to such Hotel Condominium Unit Owner's Unit or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, and each mortgagee of a Hotel Condominium Unit, by acceptance of a deed on said Hotel Condominium Unit or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, appoints and designates the President of the Association, as such Hotel Condominium Unit Owner's agent and attorney-in-fact to execute any and all such documents or consents; and, at the request of the Association a Hotel Condominium Unit Owner shall execute any power of attorney submitted if necessary or desirable as determined in Association's sole and absolute discretion so that the powers granted under this subparagraph (h) may be exercised; and
- (i) All of the powers which a not for profit corporation in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the By-Laws, Chapters 607 and 617, Florida Statutes, and the Act, in all cases except as expressly limited or restricted in the Act.

The powers and duties granted to the Association may be delegated by it as provided herein and in the Act and may be delegated to the Shared Facilities Unit Owner, such as, for example but not by way of limitation, those powers described in subparagraph 9.1(c) above. In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration, exhibits attached hereto or otherwise, the Restrictions and Easements Agreement shall take precedence over this Declaration, the Articles, By-Laws and applicable rules and regulations; this Declaration shall take precedence over the Articles, By-Laws and applicable rules and regulations; the Articles shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time. Except for any rights of control inherent in, granted to or otherwise reserved unto the Developer, the Shared Facilities Unit Owner, or Adjoining Parcel Owner and/or each of their designees and until such time as any of them relinquish any such control or rights of control, whether voluntarily or by operation of law, then notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act.

- 9.2. Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners or the Excluded Parties for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 8.1 hereof. The Association also shall not be liable to any Unit Owner or lessee or to any other person or entity or the Excluded Parties for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms. Nothing herein shall be deemed to relieve the Association of its duty to exercise ordinary care in the carrying out of its responsibilities nor to deprive the Unit Owners of their right to sue the Association if it negligently or willfully causes damage to the Unit Owners' property during the performance of the Association's duties.
- 9.3. Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- 9.4. Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record owners of the Unit is specifically required by this Declaration or by law.
- 9.5. Acts of the Association. Unless the approval or action of Unit Owners and/or a certain specific percentage of the Board is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal. Notwithstanding the foregoing, neither the Board nor the Association shall give or take any approval or action affecting the Shared Facilities Unit or Shared Facilities Unit Owner in any manner whatsoever without obtaining the prior written consent of the Shared Facilities Unit Owner.
- 9.6. Effect on Developer. If the Developer holds a Unit for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of the Developer:
- (a) Assessment of the Developer as a Unit Owner for capital improvements; and
 - (b) Any action by the Association that would be detrimental to the sales of Units by the Developer; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.
10. Determination of Common Expenses and Fixing of Assessments Therefor. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium and the Association, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by, and not waived in accordance with, applicable law) the operation, maintenance, repair and replacement of the Common Elements and Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, applicable rules and regulations, or by the Association. Common Expenses shall not include any separate obligations of individual Unit Owners, Shared Costs or Adjoining Parcel Costs including any reserves that may be assessed and collected by the Shared Facilities Unit Owner and Adjoining Parcel Owner. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws.

11. Collection of Assessments.

- 11.1. Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all Assessments coming due while he is the Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous Unit Owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right the Hotel Condominium Unit Owner may have to recover from the previous Hotel Condominium Unit Owner the amounts paid by the grantee Hotel Condominium Unit Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise. Notwithstanding anything herein to the contrary, any Assessments due from the Shared Facilities Unit Owner shall be considered as part of the Shared Costs charged to and payable by the Hotel Condominium Unit Owners.
- 11.2. Special and Capital Improvement Assessments. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:
- (a) "Special Assessments" shall mean and refer to a charge against each Unit Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements;
 - (b) "Capital Improvement Assessments" shall mean and refer to a charge against each Unit Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property and excluding the Shared Facilities Unit; and
 - (c) Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed One Hundred Twenty-five Thousand and 00/100 Dollars (\$125,000.00) (which amount shall be adjusted annually, beginning with the year of recording of this Declaration, by the CPI) or cause the total Assessments levied to exceed one hundred fifteen percent (115%) of Assessments for the preceding calendar year, the Board must obtain approval of seventy five percent (75%) of the Voting Interests of all Unit Owners represented at a meeting at which a quorum is attained.

Notwithstanding anything herein to the contrary, any Assessments due from the Shared Facilities Unit Owner (including without limitation Special and Capital Improvement Assessments) shall be considered as part of the Shared Costs charged to and payable by the Hotel Condominium Unit Owners. Furthermore, Shared Costs are not and shall not be deemed to be Common Expenses.

A Hotel Condominium Unit Owner shall also be responsible for the payment of Flag Special Assessments which may be levied by the Adjoining Parcel Owner as described in Section 7(b)(iii) of the Restrictions and Easements Agreement provided, however, that any charges so collected shall not be deemed to be Assessments or Common Expenses hereunder.

- 11.3. Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at eighteen percent (18%) per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of Twenty-five and 00/100 Dollars (\$25.00) or five percent (5%) of each delinquent installment. The Association has a lien on each Hotel Condominium Unit to secure the payment of Assessments for any unpaid Assessments on such Hotel Condominium Unit, interest thereon and reasonable attorneys' fees and costs incurred by the Association incident to the collection of the Assessments or enforcement of the lien. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be evidenced by the recording of a claim of lien in the Public Records of the County, stating the description of the Hotel Condominium Unit, the name of the record owner, the name and address of the Association and the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall be effective longer than one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure, as well as interest and all reasonable costs and attorney's fees incurred by the Association incident to the collection process. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of

lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments. In the event that liens are filed by the Association, the Shared Facilities Unit Owner and/or the Adjoining Parcel Owner, any lien of the Adjoining Parcel Owner shall have priority, liens filed by the Shared Facilities Unit Owner shall have second priority, and Association liens shall have third priority notwithstanding that one lien may have been recorded in the Public Records of the County prior in time to the other.

Additionally, each Hotel Condominium Unit Owner by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to have assigned all rents, issues and profits (the "**Collateral Assignment of Rents**") on each such Hotel Condominium Unit to the Association, which Collateral Assignment of Rents shall become absolute upon default of such Hotel Condominium Unit Owner hereunder.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Hotel Condominium Unit Owner and the recording of a claim of lien, the Association may declare the Assessment installments for the remainder of the budget year to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the remainder of the budget year, the Unit Owner or the Association, as appropriate, shall be obligated to payor reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

- 11.4. Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Hotel Condominium Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by delivery of a copy of it to the Hotel Condominium Unit Owner or by certified or registered mail, return receipt requested, addressed to the Hotel Condominium Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Hotel Condominium Unit Owner or a mailing address at which the Hotel Condominium Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Hotel Condominium Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 11.5. Appointment of Receiver to Collect Rental. If the Hotel Condominium Unit Owner remains in possession of the Hotel Condominium Unit after a foreclosure judgment has been entered, the court in its discretion may require the Hotel Condominium Unit Owner to pay a reasonable rental for the Unit. If the Hotel Condominium Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.
- 11.6. First Mortgagee. The liability of a Mortgagee, or its successor or assignees, who acquire title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the First Mortgagee's acquisition of title is limited to the lesser of:
- (a) The Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or
 - (b) One percent (1%) of the original mortgage debt.

As to a Unit acquired by foreclosure, the limitations set forth in clauses (a) and (b) above shall not apply unless the First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

A First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

- 11.7. Developer's Liability for Assessments. During the period from the date of the recording of this Declaration until the last day of the third (3rd) full calendar month following the recording of this Declaration (the "Guarantee Expiration Date"), Developer shall not be obligated to pay the share of Common Expenses and Assessments attributable to the Units owned by the Developer ("Guarantee"), provided: (i) that the regular Assessments for Common Expenses imposed on each Hotel Condominium Unit Owner other than Developer prior to the Guarantee Expiration Date shall not increase during such period over the amount set forth in **Exhibit "G"** attached hereto,

subject only to the occurrence of an Extraordinary Financial Event, as defined below; and (ii) that Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed levels receivable from other Unit Owners. After the Guarantee Expiration Date, Developer shall have the option of extending the Guarantee Expiration Date for twenty-three (23) additional three (3) month periods (each and "Additional Guarantee Period"), or paying the share of Common Expenses and Assessments attributable to Units it then owns. The Developer shall be deemed to have automatically extended the Guarantee Expiration Date by an Additional Guarantee Period unless the Developer notifies the Board of Directors in writing of its election not to extend the Guarantee Expiration Date for an Additional Guarantee Period. The Developer may also extend the Guarantee Expiration Date for a definite period of time by written agreement with a majority of non-Developer Unit Owners. Notwithstanding the above and as provided in Section 718.116(9)(a)(2) of the Act, in the event of a casualty loss affecting the Condominium resulting from a natural disaster or Act of God that is not covered by insurance proceeds from the insurance maintained by the Association as required by Section 718.111(11)(a) of the Act (an "Extraordinary Financial Event"), the costs necessary to effect restoration shall be assessed against all Unit Owners (the portion assessed against the Shared Facilities Unit shall constitute a Shared Cost) owning Units on the date of such Extraordinary Financial Event, and their successors and assigns, including the Developer (with respect to Units owned by the Developer). The Guarantee applies only to Assessments of the Association and does not apply to Shared Costs or Adjoining Parcel Costs, including but not limited to any special assessments, charges, expenses, and costs incurred by the Shared Facilities Unit Owner and/or Adjoining Parcel Owner which may be charged to a Hotel Condominium Unit Owner as provided in the Condominium Documents and the Restrictions and Easements Agreement.

- 11.8. Certificate of Unpaid Assessments. Within fifteen (15) days after written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The Association shall have the right to charge a reasonable fee for providing such services.
- 11.9. Installments. Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, Assessments will be collected monthly.
- 11.10. Application of Payments. Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

12. Obligation for Expenses Relating to Shared Facilities Unit.

- 12.1. Maintenance. As provided in Sections 3.4(d) and 7.3 above, the Shared Facilities Unit Owner has granted easements with respect to certain portions of the Shared Facilities Unit and agreed to repair, replace, improve, maintain, manage, operate, and insure the Shared Facilities Unit, all to be done as determined and ordered by the Shared Facilities Unit Owner, or otherwise as provided in Section 7.3. In consideration of the foregoing, each Hotel Condominium Unit Owner, by acceptance of a deed or other conveyance of the applicable Hotel Condominium Unit, and whether or not expressly stated, shall be deemed to agree that the costs incurred by the Shared Facilities Unit Owner in (or reasonably allocated to) the repair, replacement, improvement, maintenance, management, including a commercially reasonable management fee, operation, ad valorem tax obligations and insurance of the Shared Components, (including reserves if established by the Shared Facilities Unit Owner and any Assessments (including without limitation, Special Assessments and Capital Improvement Assessments or other such costs) payable by the Shared Facilities Unit Owner to the Association, collectively the "Shared Costs") shall be paid for in part through charges (either general or special) imposed against the Hotel Condominium Units in accordance with the terms hereof. No Hotel Condominium Unit Owner may waive or otherwise escape liability for charges for the Shared Costs by non-use (whether voluntary or involuntary) of the Shared Components, by abandonment of the right to use same or by any other means whatsoever. Notwithstanding anything herein contained to the contrary, the Shared Facilities Unit Owner shall be excused and relieved from any and all maintenance, repair and/or replacement obligations with respect to the Shared Facilities Unit to the extent that the funds necessary to perform same are not available through the charges imposed and actually collected from the Hotel Condominium Unit Owners. The Shared Facilities Unit Owner shall have no obligation to fund and/or advance any deficit or shortfall in funds which were assessed to and not paid by the Hotel Condominium Unit Owner in order to properly perform the maintenance, repair and/or replacement obligations described herein.
- 12.2. Easement. An easement is hereby reserved and created in favor of the Shared Facilities Unit Owner, and its designees over the Condominium Property for the purpose of entering onto the Condominium Property for the performance of the maintenance, repair and replacement obligations herein described and to provide any hotel services made available to the Hotel Condominium Units by, through or under the owner and/or operator of the Adjoining Parcel which may include, without limitation, maid and housekeeping daily cleaning service, central telephone

switchboard, computer hook-up, television service, movie and wireless access service, personal services such as dry cleaning, personal training, in room massage and pet services, and/or room service or other food and beverage service.

12.3. Charges to Hotel Condominium Unit Owners: Lien.

- (a) Developer, for and on behalf of all Hotel Condominium Units now or hereafter located within the Condominium Property, hereby covenants and agrees, and each Hotel Condominium Unit Owner of any Hotel Condominium Unit by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Shared Facilities Unit Owner annual charges (the "**Shared Costs Allocation**") for the operation and insurance of, and for payment of one hundred percent (100.00%) of the Shared Costs, the establishment of reserves for the replacement of the Shared Components and the furnishings and finishings thereof, capital improvement charges, special charges and all other charges hereinafter referred to or lawfully imposed by the Shared Facilities Unit Owner in connection with the repair, replacement improvement, maintenance, management, operation, and insurance of the Shared Components, all such charges to be fixed, established and collected from time to time as herein provided. The annual charge, capital improvement charge, special charge, and all other charges hereinafter referred to or lawfully imposed by the Shared Facilities Unit Owner in connection with the repair, replacement improvement, maintenance, management, operation, and insurance of the Shared Components, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Hotel Condominium Unit and shall be a continuing lien upon the Hotel Condominium Unit against which each such charge is made and upon all Improvements thereon, from time to time existing. Each such charge, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the owner of such Hotel Condominium Unit at the time when the charge fell due and all subsequent owners of that Hotel Condominium Unit until paid, except as provided in Section 12.5 below. Reference herein to charges shall be understood to include reference to any and all of said charges whether or not specifically mentioned. Each Hotel Condominium Unit shall be assessed the percentage share of the Shared Costs as is set forth on **Exhibit "H"** attached hereto. Further, all closing costs of the Shared Facilities Unit Owner, including the Shared Facilities Unit's Share of the Common Expenses and capital contributions due at closing, shall be allocated among the Hotel Condominium Unit Owners and collected by the Shared Facilities Unit Owner from each Hotel Condominium Unit Owner at each closing, and shall be paid by the Shared Facilities Unit Owner as each Hotel Condominium Unit is closed from the Shared Costs' payments made by the Hotel Condominium Unit Owner to the Shared Facilities Unit Owner.
- (b) In addition to the regular and capital improvement charges which are or may be levied hereunder, the Shared Facilities Unit Owner shall have the right to collect reserves for the replacement of the Shared Components and the furnishings and finishings thereof and to levy special charges against a Hotel Condominium Unit Owner(s) to the exclusion of other Hotel Condominium Unit Owners for the repair or replacement of damage to any portion of the Shared Facilities Unit (including, without limitation, improvements, furnishings and finishings therein) caused by the misuse, negligence or other action or inaction of an Hotel Condominium Unit Owner or his guests, tenants or invitees. Any such special charge shall be subject to all of the applicable provisions of this Section including, without limitation, lien filing and foreclosure procedures and late charges and interest. Any special charge levied hereunder shall be due within the time specified by the Shared Facilities Unit Owner in the action imposing such charge. The annual regular charges provided for in this Section shall commence on the first day of the month next following the recordation of this Declaration and shall be applicable through December 31 of such year. Each subsequent annual charge shall be imposed for the year beginning January 1 and ending December 31. The annual charges shall be payable in advance in monthly installments, or in annual, semi- or quarter-annual installments if so determined by the Shared Facilities Unit Owner (absent which determination they shall be payable monthly). The charge amount (and applicable installments) may be changed at any time by the Shared Facilities Unit Owner from that originally stipulated or from any other charge that is in the future adopted by the Shared Facilities Unit Owner. The original charge for any year shall be levied for the calendar year (to be reconsidered and amended, if necessary, at any appropriate time during the year), but the amount of any revised charge to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate installments) remaining in such calendar year. The Shared Facilities Unit Owner shall fix the date of commencement and the amount of the charge against the Hotel Condominium Units for each charge period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Hotel Condominium Units and charges applicable thereto which shall be kept in the office of the Shared Facilities Unit Owner and shall be open to inspection, upon reasonable notice and during reasonable business hours as determined by the Shared Facilities Unit Owner from time to time, by any Hotel Condominium Unit Owner. Written notice of the charge shall thereupon be sent to every Hotel Condominium Unit Owner subject thereto twenty (20) days prior to payment of the

first installment thereof, except as to special charges. In the event no such notice of the charges for a new charge period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.

- 12.4. Effect of Non-Payment of Charge; the Personal Obligation; the Lien; Remedies of the Shared Facilities Unit Owners. If the charges (or installments) provided for herein are not paid on the date(s) when due (being the date(s) specified herein or pursuant hereto), then such charges (or installments) shall become delinquent and shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Hotel Condominium Unit and all improvements thereon and thereto which shall bind such Hotel Condominium Unit in the hands of the then Hotel Condominium Unit Owner, and such owner's heirs, personal representatives, successors and assigns. In addition to these lien rights granted to the Shared Facilities Unit Owner and any other remedies available to it hereunder, in equity, at law or otherwise, the Shared Facilities Unit Owner may suspend any obligations, services or other benefits it may have or provide to the Hotel Condominium Unit Owners for which it is to receive payment or reimbursement from the Hotel Condominium Unit Owners in the event it does not receive 100% timely payment or reimbursement for such Shared Costs or other charges permitted hereunder. Any such suspension, however, shall cease when all such reimbursements have been brought current and there are no other delinquencies. Except as provided in Section 12.5 to the contrary, the personal obligation of a Hotel Condominium Unit Owner to pay such charge shall pass to such Hotel Condominium Unit Owner's successors in title and recourse may be had against either or both, jointly and severally. If any installment of a charge is not paid within ten (10) days after the due date, same shall, at the option of the Shared Facilities Unit Owner, be subject to a late charge in an amount not greater than the amount of such unpaid installment (provided that only one late charge may be imposed on any one unpaid installment and if such installment is not paid thereafter, it and the late charge shall accrue interest at the rate provided in Section 11.3 herein as to late payments on Assessments, but shall not be subject to additional late charges). Furthermore, each other installment thereafter coming due shall be subject to one late charge each as aforesaid, and the Shared Facilities Unit Owner may bring an action at law against the Hotel Condominium Unit Owner(s) personally obligated to pay the same, may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the Hotel Condominium Unit and all improvements thereon and thereto on which the charges and late charges are unpaid and may foreclose the lien against the applicable Hotel Condominium Unit and all improvements thereon and thereto upon which the charges and late charges are unpaid. The Shared Facilities Unit Owner may pursue any one or more of the foregoing remedies at the same time or successively, and attorneys' fees and costs actually incurred in preparing and filing the claim of lien and the complaint in such action, if any, and prosecuting same, shall be added to the amount of such charges, late charges and interest secured by the lien. In the event a judgment is obtained in favor of the Shared Facilities Unit Owner, such judgment shall include all such sums as above provided and attorneys' and paralegal fees incurred together with the costs of the action, through all appellate levels. Failure of the Shared Facilities Unit Owner (or any collecting entity) to send or deliver bills or notices of charges shall not relieve Hotel Condominium Unit Owners from their obligations hereunder. Additionally, each Hotel Condominium Unit Owner by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to have assigned all rents, issues and profits, a Collateral Assignment of Rents, on each such Hotel Condominium Unit to the Shared Facilities Unit Owner, which Collateral Assignment of Rents shall become absolute upon default of such Hotel Condominium Unit Owner hereunder. As an additional right and remedy of the Shared Facilities Unit Owner, upon default in the payment of the Shared Costs as aforesaid and after thirty (30) days' prior written notice to the applicable Hotel Condominium Unit Owner and the recording of a claim of lien, the Shared Facilities Unit Owner may declare the Shared Costs installments for the remainder of the budget year to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the remainder of the budget year, the Hotel Condominium Unit Owner or the Shared Facilities Unit Owner, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect. If the Hotel Condominium Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Hotel Condominium Unit Owner to pay a reasonable rental for the Hotel Condominium Unit. If the Hotel Condominium Unit is rented or leased during the pendency of the foreclosure action, the Shared Facilities Unit Owner is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action. The Shared Facilities Unit Owner shall have such other remedies for collection and enforcement of charges as may be permitted by applicable law. All remedies are intended to be, and shall be, cumulative.
- 12.5. Subordination of the Shared Facilities Unit Owner's Lien. The lien of the charges provided for in this Article shall be subordinate to real property tax liens and the lien of any first mortgage; provided, however, that any such mortgage lender when in possession, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgage lender acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgage lender, shall hold title subject to the liability and lien of any charge coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid charge which cannot be collected as a lien against any Hotel Condominium Unit by reason of the provisions of this Section shall be deemed to be a charge divided equally among, payable by and a lien against all Hotel

Condominium Units, including the Hotel Condominium Units as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

- 12.6. Curative Right. In the event (and only in the event) that the Shared Facilities Unit Owner fails to maintain the Shared Components as required under this Declaration, the Association shall have the right to perform such duties; provided, however, that same may only occur after ninety (90) days' prior written notice to the Shared Facilities Unit Owner and provided that the Shared Facilities Unit Owner has not effected curative action within said ninety (90) day period (or if the curative action cannot reasonably be completed within said ninety (90) day period, provided only that the Shared Facilities Unit Owner has not commenced curative actions within said ninety (90) day period and thereafter diligently pursued same to completion). To the extent that the Association must undertake maintenance responsibilities as a result of the Shared Facilities Unit Owners' failure to perform same, then in such event, but only for such remedial actions as may be necessary, the Association shall be deemed vested with the charge rights of the Shared Facilities Unit Owner hereunder for the limited purpose of obtaining reimbursement from the Hotel Condominium Unit Owners for the costs of performing such remedial work, and there shall be no charge to or payment by the Shared Facilities Unit Owner.
- 12.7. Financial Records. The Shared Facilities Unit Owner shall maintain financial books and records showing its actual receipts and expenditures with respect to the maintenance, operation, repair, replacement, alteration and insurance of the Shared Components, including the then current budget and any then proposed budget (the "Shared Components Records"). The Shared Components Records need not be audited or reviewed by a Certified Public Accountant. The Shared Components Records shall at all times, upon reasonable notice and during reasonable business hours as determined by the Shared Facilities Unit Owner from time to time, be subject to the inspection of any member of the Association. The determination of the Shared Facilities Unit Owner with respect to preparation and handling of the Shared Components Records shall be conclusive. The Shared Facilities Unit Owner shall use its best efforts to have each year's budget prepared by January 1 of each year subject to its right, in its sole and absolute discretion to change, postpone or delay its finalization as may be necessary or desirable as determined by the Shared Facilities Unit Owner.
- 12.8. Limitation Upon Liability of Shared Facilities Unit Owner. Notwithstanding the duty of the Shared Facilities Unit Owner to maintain and repair the Shared Components, the Shared Facilities Unit Owner shall not be liable to any other Unit Owners (nor their guests, tenants, invitees, agents, or managers, or any and all persons claiming by, through or under any of them, including without limitation the Adjoining Parcel Owner, Hotel Flag, and any company managing the Units, the Condominium or Association) (the foregoing together with the other Unit Owners, collectively the "Excluded Parties") for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Shared Components. Further, the Shared Facilities Unit Owner shall not be liable to the Excluded Parties for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Hotel Condominium Unit Owners regardless of whether or not same shall have been approved by the Shared Facilities Unit Owner pursuant to Section 8.1 hereof. The Shared Facilities Unit Owner also shall not be liable to any of the Excluded Parties or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Shared Facilities Unit Owner did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Shared Facilities Unit Owner could not obtain such insurance at reasonable costs or upon reasonable terms.
- 12.9. Shared Facilities Unit Owner's Assignment of Rights. The Shared Facilities Unit Owner may in its sole and absolute discretion assign or delegate, in whole or in part, any of its rights, benefits, duties, obligations and/or liabilities under this Declaration to any designee including, without limitation, an assignment or delegation to the owner or operator of the Adjoining Parcel, or any affiliates thereof.
- 12.10. Certificate of Unpaid Shared Costs. Within fifteen (15) days after written request by a Hotel Condominium Unit Owner or mortgagee of a Unit, the Shared Facilities Unit Owner shall use its best efforts to provide a certificate stating all Shared Costs and other moneys owed to the Shared Facilities Unit Owner by the Hotel Condominium Unit Owner with respect to his Hotel Condominium Unit. Any person other than the Hotel Condominium Unit Owner who relies upon such certificate shall be protected thereby. The Shared Facilities Unit Owner shall have the right to charge a reasonable fee for providing such services.
- 12.11. Shared Facilities Unit Owner's Consent; Conflict. The provisions of this Section 12 shall not be amended, modified or in any manner impaired and/or diminished, directly or indirectly, without an affirmative vote of not less than four-fifths (4/5ths) of the Voting Interests of all Hotel Condominium Unit Owners and the consent of the Shared Facilities Unit Owner. In the event of any conflict or inconsistency between the provisions of this Section 12, and the provisions of any other Section of this Declaration, the provisions of this Section 12 shall prevail and govern.
13. Insurance. Insurance obtained by the Shared Facilities Unit Owner pursuant to the requirements of this Section 13 shall be governed by the following provisions:

13.1. Purchase, Custody and Payment.

- (a) Purchase. All insurance policies required to be obtained by the Shared Facilities Unit Owner hereunder shall be issued by an insurance company authorized to do business in Florida or by surplus lines carriers offering policies for properties in Florida;
- (b) Named Insured. The named insured shall be the Shared Facilities Unit Owner, individually, or such designee as may be designated by the Shared Facilities Unit Owner in its sole and absolute discretion, and as agent for the interests of the Association and Unit Owners covered by the policy, if any, without naming them, and as agent for the interests of the holders of any mortgage on a Unit (or any leasehold interest therein), if any, without naming them. The Association, other Unit Owners and the holders of any mortgage on a Unit (or any leasehold interest therein) shall be deemed additional insureds on any commercial general liability policy to the extent of their interests as determined by the Shared Facilities Unit Owner in its sole and absolute discretion;
- (c) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Shared Facilities Unit Owner and the holders of any mortgage on the Shared Facilities Unit, as their interests may appear;
- (d) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Shared Facilities Unit Owner upon request to the holders of any mortgage on a Unit; and
- (e) Personal Property and Liability. Except as specifically provided herein, the Shared Facilities Unit Owner shall not be responsible to other Unit Owners or other Excluded Parties to obtain insurance coverage upon the property lying within the boundaries of their Hotel Condominium Units, including, but not limited to, the Improvements, Hotel Condominium Unit Owners' personal property, nor insurance for the Hotel Condominium Unit Owners' personal liability and living expenses, nor for any other risks not otherwise insured in accordance herewith.

13.2. Coverage. The Shared Facilities Unit Owner shall maintain insurance covering the following:

- (a) Property. The Shared Components, together with all fixtures, building service equipment, personal property and supplies constituting the Shared Components (collectively the "Insured Property"), shall be insured in an amount not less than one hundred percent (100%) of the full insurable replacement value thereof, excluding foundation and excavation costs. Notwithstanding the foregoing, the Insured Property shall not include the Hotel Condominium Units, the portions of the Shared Facilities Unit which are not part of the Shared Components, and all furniture, furnishings, floor coverings, wall coverings and ceiling coverings, other personal property owned, supplied or installed by Hotel Condominium Unit Owners (or tenants of same), and all electrical fixtures, appliances, air conditioning and heating equipment and water heaters to the extent not part of the Shared Components. Such policies may contain reasonable deductible provisions as determined by the Shared Facilities Unit Owner. Such coverage shall afford protection against loss or damage under an "all risk" or "special risk" policy form and include such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief;
- (b) Liability. Commercial general liability and, if applicable, automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property, and adjoining driveways and walkways if deemed necessary or desirable in the sole and absolute discretion of the Shared Facilities Unit Owner, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Shared Facilities Unit Owner in its sole and absolute discretion, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa;
- (c) Worker's Compensation. Statutory Worker's Compensation and Employers' Liability;
- (d) Flood Insurance. Flood Insurance covering the Insured Property, if so determined by the Shared Facilities Unit Owner; and
- (e) Other Insurance. Such other insurance as the Shared Facilities Unit Owner shall determine from time to time to be desirable in connection with the Shared Components.

When appropriate and obtainable without additional charge, each of the foregoing policies shall waive the insurer's right to: (i) as to property insurance policies, subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Shared Facilities Unit Owner (or any of its employees, contractors and/or agents), one or more Unit Owners or as a result of contractual undertakings. Additionally, when appropriate and obtainable without additional

charge, each policy shall provide that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Shared Facilities Unit Owner.

- 13.3. Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all mortgagees. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Shared Facilities Unit Owner may obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section, and the cost thereof shall be among the costs assessed against the Unit Owners in accordance with the provisions of Section 12.
- 13.4. Premiums. Premiums upon insurance policies purchased by the Shared Facilities Unit Owner pursuant to this Section 13 shall be among the costs assessed against the Unit Owners in accordance with the provisions of Section 12. Premiums may be financed in such manner as the Shared Facilities Unit Owner deems appropriate.
- 13.5. Share of Proceeds. All insurance policies obtained by or on behalf of the Shared Facilities Unit Owner pursuant to this Section 13 shall be for the benefit of the Shared Facilities Unit Owner and, only to the extent specifically applicable under the applicable policy and under this Declaration, the Association, the other Unit Owners and the holders of any mortgage on a Unit (or any leasehold interest therein), as their respective interests may appear. The duty of the Shared Facilities Unit Owner shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and the holders of any mortgage on the subject Unit(s) (or any leasehold interest therein) in accordance with the Allocated Interest attributable thereto unless specifically provided otherwise in this Declaration.
- 13.6. Distribution of Proceeds. Proceeds of insurance policies required to be maintained by the Shared Facilities Unit Owner pursuant to this Section 13 shall be distributed to or for the benefit of the beneficial owners thereof in the following manner: (a) If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof if and as elsewhere provided herein, and (b) any proceeds remaining after defraying such costs shall be distributed as provided herein or in such insurance policies as determined in the sole and absolute discretion of the Shared Facilities Unit Owner.
- 13.7. Shared Facilities Unit Owner as Agent. The Shared Facilities Unit Owner is hereby irrevocably appointed as agent and attorney-in-fact which is coupled with interest for the Association and each Hotel Condominium Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Shared Facilities Unit Owner and to execute and deliver releases upon the payment of claims. Although this appointment is self-operative, at the request of the Shared Facilities Unit Owner, a Hotel Condominium Unit Owner shall execute within ten (10) days of receipt of request and return any power of attorney submitted by the Shared Facilities Unit Owner if necessary or desirable as determined in the Shared Facilities Unit Owner's sole and absolute discretion so that the powers granted under this subparagraph 13.7 may be confirmed and/or exercised as necessary.
- 13.8. Unit Owners' Personal Coverage. The insurance to be purchased by the Shared Facilities Unit Owner pursuant to this Section 13 shall not cover claims against a Hotel Condominium Unit Owner due to occurrences within his Hotel Condominium Unit, nor casualty or theft loss to the contents of a Hotel Condominium Unit Owner's Unit. An individual Hotel Condominium Unit Owner shall purchase and pay for property and liability insurance covering Hotel Condominium Unit Owner's interests for risks not covered by insurance required to be carried by the Shared Facilities Unit Owner hereunder.
- 13.9. Effect on Association. The Association shall only maintain such insurance as is expressly required to be maintained by the Association pursuant to the Act, it being the express intent of the Developer, as the owner of each and every one of the Units upon the recordation hereof, for itself and its successors and assigns, that the Association not be required to maintain insurance hereunder. To the extent that the Association is required to maintain insurance pursuant to the express requirements of the Act, then (a) as to any insurance required to be maintained by the Association, the Shared Facilities Unit Owner shall be relieved and released of its obligation hereunder to maintain same, and (b) all of the provisions hereof regarding said insurance, any claims thereunder and the distribution and application of proceeds thereunder shall be governed in accordance with the terms of this Declaration governing the insurance required to be maintained by the Shared Facilities Unit Owner as if the references herein to the Shared Facilities Unit Owner were references to the Association.
- 13.10. Benefit of Mortgagees. Certain provisions in this Section 13 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.

14. Reconstruction or Repair After Fire or Other Casualty.

- 14.1. Determination to Reconstruct or Repair. Subject to the immediately-following paragraph, in the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Shared Facilities Unit Owner shall determine whether or not to repair and/or restore the Insured Property, and if a determination is made to effect restoration, the Shared Facilities Unit Owner may disburse the proceeds of all insurance policies required to be maintained by it under Section 13 to the contractors engaged in such repair and restoration in appropriate progress payments.

In the event the Shared Facilities Unit Owner, using sound and reasonable business judgment, determines not to effect restoration to the Shared Components, the net proceeds of insurance resulting from such damage or destruction shall be distributed to the Shared Facilities Unit Owner. The Condominium shall thereafter be terminated, which termination shall be conclusive and binding in the Shared Facilities Unit Owner's sole and absolute discretion, and the Shared Facilities Unit Owner shall have an option to purchase all of the Hotel Condominium Units as provided in Section 19.

- 14.2. Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the Final Plans and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Shared Facilities Unit Owner; provided, however, that if any reconstruction is undertaken, same shall be undertaken in such a manner to restore the Hotel Condominium Units to substantially the same condition they were in prior to the occurrence of the casualty.
- 14.3. Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Shared Facilities Unit Owner, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, charges shall be made against the Hotel Condominium Unit Owners by the Shared Facilities Unit Owner (which shall be deemed to be charges made in accordance with, and secured by the lien rights contained in, Section 12 above) in sufficient amounts to provide funds for the payment of such costs. Such charges on account of damage to the Insured Property shall be in proportion to all of the Hotel Condominium Unit Owners' respective shares of the Shared Costs as is set forth on Exhibit "H" attached hereto.
- 14.4. Benefit of Mortgagees. Certain provisions in this Section 14 are for the benefit of mortgagees of Units and may be enforced by any of them.
- 14.5. Modification. Notwithstanding anything to the contrary contained in this Section 14 and this Declaration, the Shared Facilities Unit Owner reserves the right, in its sole and absolute discretion, to modify the above insurance and casualty requirements as it deems necessary or appropriate in order to facilitate the operation, maintenance, construction, repair, replacement and/or restoration of the Condominium Realty, Shared Facilities Unit, and/or Condominium Property.

15. Condemnation.

- 15.1. Deposit of Awards. The taking of portions of the Shared Components by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be distributed to the Shared Facilities Unit Owner. Even though the awards may be payable to Hotel Condominium Unit Owners, the Hotel Condominium Unit Owners shall deposit the awards with the Shared Facilities Unit Owner; and in the event of failure to do so, in the sole and absolute discretion of the Shared Facilities Unit Owner, a charge shall be made against a defaulting Hotel Condominium Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Hotel Condominium Unit Owner, if any.
- 15.2. Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be casualty.
- 15.3. Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty.
- 15.4. Taking of Shared Components. Awards for the taking of Shared Components may be used to render the remaining portion of the Shared Components usable in the manner approved by the Shared Facilities Unit Owner; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Shared Components. The balance of the awards for the taking of Shared Components, if any, shall be distributed to the Shared Facilities Unit Owner. Notwithstanding the foregoing, in the event that the costs of restoration resulting from any taking exceed One Million and 00/100 Dollars (\$1,000,000.00) (which amount shall be adjusted annually, beginning with the year of recording of this Declaration, by the CPI), then the Shared Facilities Unit Owner shall have the sole right to determine whether or not to repair and/or restore

in the same manner as is provided in Section 14 above with respect to a casualty loss. If there is a mortgage on the Shared Facilities Unit, the distribution shall be paid jointly to the Shared Facilities Unit Owner and the said mortgagees if required by the terms of any applicable mortgage on the Shared Facilities Unit.

- 15.5. Modification. Notwithstanding anything to the contrary contained in this Section 15 and this Declaration, the Shared Facilities Unit Owner reserves the right, in its sole and absolute discretion, to modify the above insurance and casualty requirements as it deems necessary or appropriate in order to facilitate the operation, maintenance, construction, repair, replacement and/or restoration of the Condominium Realty, Shared Facilities Unit, and/or Condominium Property
16. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium Property and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:
- 16.1. Zoning; Occupancy. The Condominium Property is located in a zoning district of the City of Fort Lauderdale ("City"), which requires transient occupancy and, as such, the Condominium Property shall be operated continuously as a public lodging establishment/transient facility. The City's zoning code may require that certain facilities and/or services be made available to occupants, including, for example, daily room cleaning service, and each Hotel Condominium Unit being serviced by a central switchboard telephone system. To comply with applicable zoning, it is intended that the Hotel Condominium Units together with the units in the Adjoining Parcel will be advertised and held out to the public as a hotel regularly rented to Hotel Guests on a transient basis (including, as frequently as daily). The City's zoning code also permits various accessory uses typical of a resort hotel operation, and, therefore, the Adjoining Parcel may include, dining rooms, restaurants, nightclubs, bars, retail stores, personal service shops, patio bars, and outdoor food service bars. Accordingly, each Hotel Condominium Unit shall be used for transient occupancy only, and shall not be used by any Hotel Condominium Unit Owner or occupant as their sole residence or permanent residence. Each Hotel Condominium Unit Owner shall comply with all laws relating to public lodging establishments, including all applicable State, County and City laws relating to transient occupancy. The sufficiency of such compliance shall be as determined by the Adjoining Parcel Owner in its sole and absolute discretion. Each Hotel Condominium Unit Owner, by acceptance of the Deed, designates the Adjoining Parcel Owner as its irrevocable agent and attorney-in-fact coupled with an interest to have the right, but not the obligation, to ensure the Condominium Property's compliance with all applicable laws restricting the use of the Hotel Condominium Units to transient occupancy, including, at the sole and absolute discretion of the Adjoining Parcel Owner, the Adjoining Parcel Owner's obtaining any and all necessary licenses at the sole cost of each Hotel Condominium Unit Owner and as part of the Shared Costs or Adjoining Parcel Costs. To the extent applicable zoning laws permit more non-transient use of the Hotel Condominium Units, then the Declaration is deemed to be automatically modified to permit such additional non-transient use. Notwithstanding the foregoing, Units owned by the Developer may be used for other non-residential uses in connection with the development of the Condominium Property and sale and lease of the Hotel Condominium Units. Although the above power-of-attorney is self-operative, at the Closing of the Hotel Condominium Unit and at anytime within ten (10) days of the request of the Adjoining Parcel Owner, a Hotel Condominium Unit Owner shall execute within ten (10) days of receipt of request and return any irrevocable or other power of attorney coupled with interest if necessary or desirable as determined in the Adjoining Parcel Owner's sole and absolute discretion so that the powers granted under this subparagraph 16.1 may be confirmed and/or exercised as necessary. Notwithstanding the power of attorney granted under this subparagraph 16.1, it is the Hotel Condominium Unit Owner's absolute obligation to comply with and to ensure that the Hotel Condominium Unit and the use thereof comply with all laws, ordinances, rules, and regulations promulgated by any governmental agency having jurisdiction thereof.

The use or occupancy of Hotel Condominium Units owned by Unit Owners under timeshare, fractional ownership, interval exchange (whether the program is based on direct exchange of occupancy rights, cash payments, reward programs or other point or accrual systems) or other membership plans or arrangements (collectively, "Occupancy Plans") through which a participant in the plan or arrangement acquires an ownership interest in the Hotel Condominium Unit with attendant rights of periodic use and occupancy or acquires contract rights to such periodic use and occupancy of the Hotel Condominium Unit or a portfolio of accommodations including the Hotel Condominium Unit is absolutely prohibited; however, such use or occupancy shall be permitted where any such Hotel Condominium Unit is owned by the Developer, Shared Facilities Unit Owner, or the Hotel Flag (as defined in the Restrictions and Easements Agreement) or any of their affiliates and the Occupancy Plan for any such Hotel Condominium Unit or Hotel Condominium Units is managed by the Hotel Flag (as defined in the Restrictions and Easements Agreement) or its affiliates.

The Shared Facilities Unit may be used for any lawful purpose, and may be used by the owner thereof and its guests, tenants and invitees, however, it is not intended for commercial or industrial use. The provisions of this subsection 16.1 shall not be applicable to Hotel Condominium Units used by the Developer for model units, sales or resales offices or management or administrative services or other non-residential purposes, if any. Developer also reserves the right to transact on the Condominium Property, including unsold Hotel Condominium Units and the Shared Facilities Unit, all business necessary to consummate the sale and/or lease of Units, as well as any other

projects it or its affiliates may develop, including, but not limited to, the right to maintain models, place signs and banners, have employees in the area, use the Common Elements and Shared Facilities Unit, and show Hotel Condominium Units.

The rights of Hotel Condominium Unit Owners to use the Shared Facilities Unit shall be limited to the extent granted in, and subject to the ingress and egress restrictions of, Section 3.4(d), and the obligation for payment of the charges as set forth in Section 12. It is contemplated that in addition to use as a typical hallway for pedestrian passage, the Shared Facilities Unit will be utilized by the Shared Facilities Unit Owner in such a manner as to provide hotel services for the Condominium Property, which may include, without limitation, maid and housekeeping daily cleaning services, central telephone switchboard, computer hook-up, television services, movie and wireless access, personal services (such as dry cleaning, personal training, in room massage, and pet services) and/or room service or other food and beverage services.

The provisions of this subsection 16.1 shall not be amended without the affirmative vote of not less than four-fifths (4/5ths) of the total Voting Interests of all Hotel Condominium Unit Owners, the consent of the Shared Facilities Unit Owner, and the consent of Developer.

- 16.2. Children. There is no prohibition against children occupying the Hotel Condominium Units, but parents or guardians of children are responsible for supervising their children (under the age of twelve (12) years old) at all times, and parents or guardians shall be held financially responsible for any damage to Units or injury to other Unit Owners caused by their children.
- 16.3. Pet Restrictions. Domesticated dogs and/or cats may be maintained in a Hotel Condominium Unit provided: (i) no more than two (2) in total of any combination of dog and/or cat are maintained in a single Hotel Condominium Unit; (ii) such pets are permitted to be so kept by applicable laws and regulations, (iii) such pets are not left unattended on terraces or balconies or in lanai areas, (iv) such pets are not a nuisance to occupants of other Units, (v) such pets are not a breed considered to be dangerous by either the Adjoining Parcel Owner, Shared Facilities Unit Owner or the Association and (vi) such pets are subject to such weight and size requirements as determined by the Association, the Shared Facilities Unit Owners and the Adjoining Parcel Owner. No reptiles or wildlife shall be kept in or on the Condominium Property (including within Hotel Condominium Units). Hotel Condominium Unit Owners must collect and appropriately dispose of all solid wastes of their pets. All pets (including cats) must be kept on a leash of a length that affords reasonable control over the pet at all times when outside the Hotel Condominium Unit. This Section 16.3 shall not be interpreted to prohibit the reasonable keeping of customary pet fish or a caged, household-type bird(s) within a Hotel Condominium Unit, provided that such pets are not kept on a balcony or terrace, or otherwise become a nuisance or annoyance to other occupants of the Condominium. Violation of the provisions of this Section 16.3 shall entitle the Adjoining Parcel Owner, the Shared Facilities Unit Owner and/or the Association to all of their respective rights and remedies, including, but not limited to, the right to fine Hotel Condominium Unit Owners (as provided in this Declaration or in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Property. Neither the Developer, the Adjoining Parcel Owner, the Shared Facilities Unit Owner nor the Association shall be liable for any personal injury, death or property damage caused by a pet or resulting from a violation of the foregoing and any occupant of a Hotel Condominium Unit committing such a violation the Hotel Condominium Unit Owner and the pet owner shall fully indemnify and hold harmless the Developer, Adjoining Parcel Owner, Shared Facilities Unit Owner, each other Hotel Condominium Unit Owner and the Association in such regard. Notwithstanding the foregoing, however, in the event that a first-time Unit Owner purchasing from the Developer has more than two pets at the time of execution of the Real Estate Purchase Agreement for the Hotel Condominium Unit, the consent of the Association shall not be required and the Unit Owner may keep said excess pet or pets within the confines of the Unit subject, however, to the prior written approval of the Developer and to all other rules and/or regulations in effect at the time pertaining to pets, until the death of that pet. Thereafter, if the Unit Owner desires to adopt a new pet, said Unit Owner shall be required to comply with all rules and regulations then in effect with regard to pets including without limitation the number of pets which may be maintained within a Hotel Condominium Unit.
- 16.4. Hotel Service. The Adjoining Parcel Owner shall have the exclusive right (but not the obligation) to provide hotel services to the Condominium Property (including those hotel related services required to be made available pursuant to the City's zoning code), including, but not limited to, solicitation and/or provision of maid and housekeeping daily cleaning services, central telephone switchboard, computer hook-ups, telecommunications services, including without limitation cable/satellite television, movie and wireless access service as part of an integrated hotel system, twenty-four (24) hour front desk services, concierge and personal services (*i.e.*, massage, personal training, dry cleaning, pet care services, etc.) and/or room service or other food and beverage service, to the Hotel Condominium Unit Owners, their guests, tenants, invitees and other occupants. Such hotel services, to the extent provided, will be provided on a similar basis as provided to Hotel Guests of the Adjoining Parcel to the extent and subject to the same limitations as Hotel Guests of the Adjoining Parcel, with charges for same either included as part of the Shared Costs and/or charged on an individual fee basis for the specific services provided, (including amounts and terms of payment) as determined by the Shared Facilities Unit Owner or its designee in its sole and absolute discretion, notwithstanding the charge for any such service to Hotel Guests. No amendment to this Declaration or rule of the Association shall be adopted to

impair or abridge the rights herein granted without an affirmative vote of not less than eighty percent (80%) of the Voting Interests of the Hotel Condominium Unit Owners and the consent of the Shared Facilities Unit Owner.

- 16.5. Alterations. Without limiting the generality of Section 8.1 hereof, but subject to Section 9 hereof, no Hotel Condominium Unit Owner shall cause or allow improvements or changes to any Hotel Condominium Unit, the Shared Facilities Unit, Common Elements or Association Property, including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the West Tower or the exterior of said Hotel Condominium Unit, without obtaining the prior written consent of the Association and/or Shared Facilities Unit Owner, as applicable, in the manner specified in section 8.1 hereof. For example, curtains or drapes (or linings thereof) which face the exterior windows or glass doors of Hotel Condominium Units shall be subject to approval by the Shared Facilities Unit Owner.
- 16.6. Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property or Association Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Hotel Condominium Units or which interferes with the peaceful possession or proper use of the Condominium Property and/or Association Property by its occupants or members. No activity specifically permitted by this Declaration, including, without limitation, activities or businesses conducted from the Shared Facilities Unit, shall be deemed a nuisance.
- 16.7. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and, any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 16.7. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section.
- 16.8. Leases. Leasing shall be in accordance with Section 17 below.
- 16.9. Weight and Sound Restriction. Hard and/or heavy surface floor coverings, including but without limitation, tile, marble or wood, may not be installed in any part of a Hotel Condominium Unit other than the kitchens and bathrooms, unless same meets or exceeds the sound insulation parameters established from time to time by the Shared Facilities Unit Owner and prior written consent of the Shared Facilities Unit Owner is obtained. Further, the installation of the foregoing insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the building structure, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and must be installed prior to the Hotel Condominium Unit being occupied. Notwithstanding the foregoing, the floor coverings (and insulation and adhesive material therefor) installed on any balcony or terrace shall comply with the requirements established by the Shared Facilities Unit Owner, in its sole and absolute discretion, and the Hotel Condominium Unit Owner shall obtain written approval from the Shared Facilities Unit Owner before installing any floor covering on any balcony or terrace. Also, the installation of any improvement or heavy object must be submitted to and approved by the Shared Facilities Unit Owner, and be compatible with the overall structural design of the West Tower. The Shared Facilities Unit Owner may require a structural engineer to review certain of the proposed Improvements, with such review to be at the Hotel Condominium Unit Owner's sole expense. The Shared Facilities Unit Owner will have the right to specify the exact material to be used on balconies or terrace. Any use guidelines set forth by the Shared Facilities Unit Owner shall be consistent with good design practices for the waterproofing and overall structural design of the West Tower. Hotel Condominium Unit Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Shared Facilities Unit Owner has the right to require immediate removal of violations. Each Hotel Condominium Unit Owner, by acceptance of a deed or other conveyance of their Hotel Condominium Unit, whether or not it shall be so expressed in any such deed or other conveyance, hereby acknowledges and agrees that sound transmission in a high-rise building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and/or mechanical equipment can often be heard in another Hotel Condominium Unit. **NEITHER THE DEVELOPER NOR THE SHARED FACILITIES UNIT OWNER MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND TRANSMISSION BETWEEN AND AMONG UNITS AND THE OTHER PORTIONS OF THE CONDOMINIUM PROPERTY, AND EACH HOTEL CONDOMINIUM UNIT OWNER HEREBY WAIVES AND EXPRESSLY RELEASES ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND TRANSMISSION. SEE ALSO SECTION 22 BELOW.**
- 16.10. Exterior Improvements. Without limiting the generality of Sections 8.1 or 16.5 hereof, but subject to any provision of this Declaration specifically permitting same, no Hotel Condominium Unit

Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Condominium Building (including, but not limited to, awnings, signs (including but not limited to "For Sale" and "For Lease" signs), storm shutters, screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Shared Facilities Unit Owner.

- 16.11. Access to Units. In order to facilitate access to the Hotel Condominium Units by the Association for the purposes enumerated in Section 9.1 hereof and by the Shared Facilities Unit Owner for the purposes set forth in this Agreement, it shall be the responsibility of all Hotel Condominium Unit Owners to deliver a set of keys (or access card or code, as may be applicable) to their respective Hotel Condominium Units to the Association and to the Shared Facilities Unit Owner to use in the performance of their functions. No Hotel Condominium Unit Owner or other person shall change the locks, access card or codes to his Hotel Condominium Unit without so notifying the Association and Shared Facilities Unit Owner and delivering to the Association and to the Shared Facilities Unit Owner a new set of keys (or access card or code, as may be applicable) to such Hotel Condominium Unit. The Shared Facilities Unit Owner shall have the right to adopt reasonable regulations from time to time regarding access control and check-in, check-out procedures which shall be applicable to both Hotel Guests and Hotel Condominium Unit Owners and their family members, tenants, guests, invitees and other occupants.
- 16.12. Antennas, Satellite Dishes. To the extent such limitation is permitted by applicable law, no Hotel Condominium Unit Owner may install any antenna, satellite dish or other transmitting or receiving apparatus in or upon his or her Hotel Condominium Unit (and/or areas appurtenant thereto), without the prior written consent of the Shared Facilities Unit Owner.
- 16.13. Parking. All vehicle parking shall be in the Adjoining Parcel and by valet or self-parking or a combination thereof, as determined from time to time in the sole and absolute discretion of the Adjoining Parcel Owner, and such self-parking shall be in areas of the Adjoining Parcel designated by the Adjoining Parcel Owner in its sole and absolute discretion. All parking shall be subject to the procedures, rules and regulations adopted from time to time pursuant to the Restrictions and Easements Agreement. The Restrictions and Easements Agreement authorizes the Adjoining Parcel Owner to provide the valet service and to impose a fee for such service for all cars. The cost of the valet service will be allocated between the Adjoining Parcel Owner and the Hotel Condominium Unit Owners as determined by the Adjoining Parcel Owner in its absolute discretion, and the portion allocated to the Hotel Condominium Unit Owner for valet service for one hundred seventy-one (171) cars shall be included in the Adjoining Parcel Costs established by the Adjoining Parcel Owner under the Restrictions and Easements Agreement. Similarly, the cost of maintaining the parking garage and establishing reserves for repairs and improvements to the parking garage will be allocated between the Hotel Condominium Units and the Adjoining Parcel in the absolute discretion of the Adjoining Parcel Owner, and the amount allocated to the Hotel Condominium Units shall be included in the Adjoining Parcel Costs established by the Adjoining Parcel Owner. Subject to the availability of additional parking spaces, all additional cars shall pay valet charges for parking as determined by the Adjoining Parcel Owner, in its absolute discretion. Unless expressly granted advance permission by the Adjoining Parcel Owner or by the applicable rules and regulations of the Adjoining Parcel Owner, no motor homes, trailers, boats, campers, trucks larger than one ton, or vans or trucks used for commercial purposes or having substantially oversized tires, or vehicles that cannot be accommodated due to height, width or length limitations, shall be permitted to be parked or stored in the Garage that is the subject of the Restrictions and Easements Agreement.
- 16.14. Storage on Balconies and Terraces. No equipment, materials or other items shall be kept or stored on any balcony or terrace of the Condominium Property, including, but not limited to, towels, clothing, and bicycles. The foregoing shall not prevent, however, placing and using patio-type furniture, planters and other items in such areas if same are normally and customarily used for a residential balcony or terrace, but all such patio-type furniture, planters and other items must be acceptable to the Shared Facilities Unit Owner. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Shared Facilities Unit Owner shall be final and dispositive.
- 16.15. Relief by Shared Facilities Unit Owner. The Shared Facilities Unit Owner shall have the power (but not the obligation) to grant relief in particular circumstances from the provision of specific restrictions contained in this Section 16 for good cause shown.
- 16.16. Effect on Developer. The restrictions and limitations set forth in this Section 16 shall not apply to the Developer or to Units owned by the Developer. If permitted by law, the Shared Facilities Unit and Shared Facilities Unit Owner shall also be exempt from compliance with the restrictions and limitations of this Section 16.
- 16.17. Relationship With Hotel Flag. Developer and Hotel Flag (as defined in the Restrictions and Easements Agreement) (and/or their affiliates) may enter into or have entered into certain agreements that permit Developer, while such agreements are in effect, to use a trade name, trademark and/or proprietary rights of Hotel Flag (collectively, the "Hotel Flag's Proprietary Rights") in connection with the initial sale and marketing of the Condominium and Adjoining Parcel and which may provide for Hotel Flag and/or its affiliates (each a "Hotel Flag Party") to manage all or portions of the Condominium Property. By acceptance of a deed to a Unit or other

conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance to a Unit, a Hotel Condominium Unit Owner acknowledges and agrees that the Hotel Condominium Unit has been marketed to, and is being sold to, such Hotel Condominium Unit Owner solely by Developer, and not by any Hotel Flag Party and that Hotel Flag shall have no liability or obligation in connection with the same. **A HOTEL CONDOMINIUM UNIT OWNER BY ACCEPTANCE OF A DEED TO A HOTEL CONDOMINIUM UNIT OR OTHER CONVEYANCE THEREOF, WHETHER OR NOT IT SHALL BE SO EXPRESSED IN ANY SUCH DEED OR OTHER CONVEYANCE, ACKNOWLEDGES AND AGREES THAT (i) NO HOTEL FLAG PARTY HAS ACTED AS THE DEVELOPER, ARCHITECT, ENGINEER, CONTRACTOR, SALES REPRESENTATIVE, SPONSOR OR IN ANY SIMILAR CAPACITY IN CONNECTION WITH THE DEVELOPMENT OF THE CONDOMINIUM OR THE ADJOINING PARCEL AND THE MARKETING AND SALE OF THE HOTEL CONDOMINIUM UNIT TO A HOTEL CONDOMINIUM UNIT OWNER, AND (ii) NO HOTEL FLAG PARTY (INCLUDING ANY REPRESENTATIVE OR AGENT THEREOF) HAS MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER (EXPRESS OR IMPLIED) IN CONNECTION WITH THE SALE OF THE HOTEL CONDOMINIUM UNIT TO A HOTEL CONDOMINIUM UNIT OWNER.** Hotel Condominium Unit Owner by acceptance of a deed to a Hotel Condominium Unit or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, further acknowledges and agrees that it is not a third-party beneficiary of any agreements between Developer and any Hotel Flag Party and that there are no guarantees that the Condominium or Adjoining Parcel will be operated as a hotel under the flag of Hotel Flag or that any Hotel Flag Party will manage the Condominium and/or Adjoining Parcel at the time of closing or for any period following closing on the purchase of a Hotel Condominium Unit by a Hotel Condominium Unit Owner. In no event shall a Hotel Condominium Unit Owner acquire any right or interest in the Hotel Flag's Proprietary Rights, which shall at all times remain the sole and exclusive property of Hotel Flag.

17. Selling, Leasing and Mortgaging of Units. Subject to the provisions of this Declaration, each Hotel Condominium Unit Owner shall have the right to sell, lease or mortgage his or her Hotel Condominium Unit without further restriction.

- 17.1. When a Hotel Condominium Unit is leased, the tenant shall be subject to and comply with the applicable provisions of this Declaration (including without limitation Sections 16.1 and 16.17 above), and any rules and regulations adopted by the Association (as to Association Property, and although leasing is not subject to the approval of the Association), the Shared Facilities Unit Owner (as to the Shared Facilities Unit and Shared Components) and/or by the Adjoining Parcel Owner (as to the Adjoining Parcel). To comply with applicable zoning, it is intended that the Hotel Condominium Units together with the units in the Adjoining Parcel will be advertised and held out to the public as a hotel regularly rented to Hotel Guests on a transient basis (including, as frequently as daily). Although there is no minimum or maximum number of times per year that a Hotel Condominium Unit must be leased, the lease term must be consistent with transient use. Each tenant or occupant shall comply with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits thereto) and with any and all rules and regulations adopted by the Shared Facilities Unit Owner, Association and/or the Adjoining Parcel Owner from time to time, depending upon which are applicable, including, without limitation, any and all regulations and/or procedures adopted by the Shared Facilities Unit Owner, Adjoining Parcel Owner, and/or Hotel Flag Party regarding check-in for Hotel Condominium Unit Owners (and other occupants including without limitation tenants) and/or Hotel Guests, coordination of charging privileges and other matters necessary to allow Hotel Condominium Unit Owners and Hotel Guests to be well integrated into a unified structure and operation. It shall be the obligation and responsibility of each Hotel Condominium Unit Owner to advise in writing the Association, the Adjoining Parcel Owner and the Shared Facilities Unit Owner, or any designee of each, such as an engaged manager, of the identity of any tenant or other intended occupant of the Hotel Condominium Unit other than the record owner and the expected duration of occupancy by same. The Hotel Condominium Unit Owner will be jointly and severally liable with the tenant to the Association, the Shared Facilities Unit Owner, and/or the Adjoining Parcel Owner, as applicable, for any amount which is required by the Association, the Shared Facilities Unit Owner and/or the Adjoining Parcel Owner to repair any damage to the Common Elements, the Shared Components and/or the Adjoining Parcel resulting from acts or omissions of tenants as determined in the absolute discretion of the Association as to Common Elements, the Shared Facilities Unit Owner as to the Shared Facilities Unit or the Shared Components; or of the Adjoining Parcel Owner as to the Adjoining Parcel, and to pay any claim for injury or damage to property caused by the negligence of the tenant and special charges may be levied against the Hotel Condominium Unit therefor. All tenancies are subordinate to any lien filed by the Association, the Shared Facilities Unit Owner or the Adjoining Parcel Owner, whether prior or subsequent to such lease. Each tenant shall have all use rights in Association Property, the Shared Components, and those Common Elements otherwise readily available for use generally by Hotel Condominium Unit Owners, and the owner of the leased Hotel Condominium Unit shall not have such rights, except as a guest, during the term of the lease. Nothing herein shall interfere with the access rights of the Hotel Condominium Unit Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Association (as to Association Property), the Shared Facilities Unit Owner (as to the Shared Facilities Unit and Shared Components) and the Adjoining Parcel Owner (as to the Adjoining Parcel) shall have the right to adopt rules to prohibit dual usage by a Hotel Condominium Unit

Owner and a tenant of Association Property, the Shared Components and Common Elements, and the Adjoining Parcel during the term of such tenancy, otherwise readily available for use generally by owners.

- 17.2. A Hotel Condominium Unit Owner may rent his Hotel Condominium Unit by whatever means, including by his own advertising, utilizing the rental services of an independent rental management company, such as a licensed real estate broker, or by participating (in his sole discretion) in a rental arrangement if same is provided by the Adjoining Parcel Owner; provided, however, that (in addition to, and without limitation of the restrictions set out elsewhere in this Declaration, including, without limitation, in Sections 16.1 and 16.17), no Hotel Condominium Unit Owner may (a) identify or affiliate his Hotel Condominium Unit with the brand name of any person or entity other than the brand name (if any) by which Adjoining Parcel is identified, (b) permit any person or entity other than Hotel Flag to utilize the tradename or trademarks of Hotel Flag in connection with the advertisement or promotion of any rental of his Hotel Condominium Unit or (c) permit his Hotel Condominium Unit to be advertised or promoted through or otherwise affiliated with, any reservation system or network by whatever means (e.g., Internet, electronic or otherwise) that identifies or otherwise represents the Hotel Condominium Unit as being part of an integrated hotel operation (as distinct from a transient rental of a privately owned unit), unless such advertisement, promotion or reservation system or network is operated by Adjoining Parcel Owner or its designee.
- 17.3. By acceptance of a deed or other conveyance of a Hotel Condominium Unit, whether or not it shall be so expressed in any such deed or other conveyance, each Hotel Condominium Unit Owner hereby agrees to lease his or her Hotel Condominium Unit, and each tenant agrees to act, in a manner that complies with all applicable municipal, county and state codes, ordinances, and regulations, and the terms and conditions of this Declaration, including without limitation, Section 16 above and this Section 17.
- 17.4. There shall be no amendment to this Section 17 or to any other provision of this Declaration which shall impair the rights established in this Section 17, without the prior approval of eighty percent (80%) of the entire Voting Interests of all Hotel Condominium Unit Owners and the consent of the Shared Facilities Unit Owner. Any amendment restricting Unit Owners' rights relating to the rental of Units applies only to Unit Owners who consent to the amendment and Unit Owners who purchase their Units after the effective date of that amendment.
18. Compliance and Default. The Association, each Unit Owner, occupant of a Hotel Condominium Unit, tenant and other invitee of a Hotel Condominium Unit Owner shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all of such documents shall be deemed incorporated into any lease of a Hotel Condominium Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 18.1. Mandatory Nonbinding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for nonbinding arbitration. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award. The Shared Facilities Unit Owner shall not be required to comply with the provisions of this Section 18.1 in any circumstance whatsoever unless otherwise required to do so by the Act or any other applicable law. The provisions of this subparagraph 18.1 shall apply only in the event the Condominium is a residential condominium or mixed-use condominium and not a commercial condominium.
- 18.2. Negligence and Compliance. A Hotel Condominium Unit Owner and/or tenant of a Hotel Condominium Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, invitees, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association and/or the Shared

Facilities Unit Owner. In the event a Hotel Condominium Unit Owner, tenant or occupant fails to maintain a Hotel Condominium Unit or fails to cause such Hotel Condominium Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association and/or the Shared Facilities Unit Owner, in the manner required, the Association and/or the Shared Facilities Unit Owner shall have the right to proceed in equity to require performance and/or compliance, to impose any applicable fines, to sue at law for damages, and to charge the Hotel Condominium Unit Owner for the sums necessary to do whatever work is required to put the Hotel Condominium Unit Owner or Hotel Condominium Unit in compliance; provided, however, that nothing contained in this Section 18.2 shall authorize the Association and/or the Shared Facilities Unit Owner to enter a Unit to enforce compliance unless otherwise permitted by law. In any proceeding arising because of an alleged failure of a Hotel Condominium Unit Owner, a tenant, the Association and/or the Shared Facilities Unit Owner to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). A Hotel Condominium Unit Owner prevailing in an action with the Association, in addition to recovering his reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Hotel Condominium Unit Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.

19. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation, or eminent domain of the Condominium Realty and Improvements as provided in Sections 14 and 15 hereof, or by direction of the Adjoining Parcel Owner in the event of casualty loss, condemnation or eminent domain of the Adjoining Parcel as provided in the Restrictions and Easements Agreement (collectively "Involuntary Termination") as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote at a special meeting of the Association ("Voluntary Termination") of, or approval in writing by, not less than four-fifths (4/5ths) of all Voting Interests of all Hotel Condominium Unit Owners and the consent of the Shared Facilities Unit Owner, together with the written consent of the Developer so long as it owns any Unit.

The vote of those Hotel Condominium Unit Owners approving the Voluntary Termination shall be irrevocable until after the expiration of the Option Period (defined below). Any Hotel Condominium Unit Owner voting against the Voluntary Termination, or not voting, may at any time prior to the expiration of the Option Notice Period (defined below), within fifteen (15) days from the Voluntary Termination Date, change or cast his vote in favor of termination by delivering written notification thereof to the Shared Facilities Unit Owner.

By acceptance of a deed to a Hotel Condominium Unit or other conveyance thereof, whether or not it shall be so expressed in any such deed or conveyance, a Hotel Condominium Unit Owner agrees that (i) not later than sixty (60) days ("Option Notice Period") from the date of an Involuntary Termination ("Involuntary Termination Date") or the date of the special meeting as to a Voluntary Termination ("Voluntary Termination Date"), the Shared Facilities Unit Owner shall have an option ("Option") (to remain open and irrevocable by the Hotel Condominium Unit Owner, subject however to termination by the Shared Facilities Unit Owner in its absolute discretion by the recording in the Public Records of the County of a writing terminating the Option) to purchase any or all of the Hotel Condominium Units, including all fixtures and improvements and appurtenances thereto, except those that are the personal property of the Hotel Condominium Unit Owner (such Hotel Condominium Units are hereinafter individually and/or collectively the "Option Property") for a period of one hundred eighty (180) days from either the Involuntary Termination Date or Voluntary Termination Date, as applicable ("Option Period"), and (ii) the uses, privileges, easements and other benefits in connection with the Shared Facilities Unit accruing to the Hotel Condominium Unit Owner by virtue of ownership of a Hotel Condominium Unit constitute valuable and sufficient consideration by the Shared Facilities Unit Owner to the Hotel Condominium Unit Owner to support the granting of the Option.

In the event of either an Involuntary Termination or Voluntary Termination, the Option shall be exercised within the Option Period upon the following terms:

- (a) Exercise of Option – The Option shall be exercised during the Option Notice Period by delivery, or the mailing by certified or registered mail, of notice ("Option Notice") to a Hotel Condominium Unit Owner at his or her last known address as shown on either the official records of the Association or the Shared Facilities Unit Owner, that the Shared Facilities Unit Owner, its successors or assigns, is exercising the Option.
- (b) Purchase Price – The purchase price for the Option Property shall be the fair market value as determined between each respective Hotel Condominium Unit Owner and Shared Facilities Unit Owner. In the absence of agreement on the purchase price of the Option Property, the purchase price shall be determined by an appraiser appointed by the Chairman of the Broward County Board of Realtors (or its equivalent). A judgment of specific performance of the sale, at the purchase price determined by the appraiser, may be entered in any court of competent jurisdiction. In the event of an Involuntary Termination, the purchase price of the Option Property shall be reduced by the gross

amount of any insurance award or awards, if any, received by a Hotel Condominium Unit Owner under policies purchased by the Association, the Shared Facilities Unit Owner or the Adjoining Parcel Owner.

- (c) Payment of Purchase Price – The purchase price shall be paid in cash at the closing of the Option Property.
- (d) Assignability and Binding Effect – The Option is freely assignable by the Shared Facilities Unit Owner, its successors and assigns, as may be determined in the absolute discretion of each from time to time. A written copy of any such assignment shall be provided to the Hotel Condominium Unit Owner promptly upon written request. The Option shall be binding upon and shall inure to the benefit of the parties to it, and to their respective heirs, successors, and/or assigns.
- (e) Escrow Agent – The Option Notice shall provide the name of the party who shall act as the Escrow Agent with whom any monies in connection with the sale and Option shall be placed.
- (f) Title – Unless the Shared Facilities Unit Owner elects to accept title with any defects in its absolute discretion and then only with respect to such defects, a Hotel Condominium Unit Owner shall convey, by Statutory Warranty Deed, to the Shared Facilities Unit Owner good, marketable and insurable title, free and clear of all liens and encumbrances, showing title vested in the Hotel Condominium Unit Owner, and otherwise in accordance with the standards adopted by The Florida Bar and as may be further required by Shared Facilities Unit Owner's legal counsel and the legal counsel for any lender of Shared Facilities Unit Owner. The Shared Facilities Unit Owner shall provide a commitment and owner's policy for title insurance for the Option Property from a title insurance agent of its choice, and the cost of the commitment shall be paid at closing by the Hotel Condominium Unit Owner and the cost of the policy shall be paid by the Shared Facilities Unit Owner. The Shared Facilities Unit Owner shall have sixty (60) days from the receipt of such title evidence within which to examine it and to provide Hotel Condominium Unit Owner with written objections thereto. Hotel Condominium Unit Owner shall then have sixty (60) days within which to remedy all non-monetary objections, and those objections which can be cured by the payment of money, shall be paid by Hotel Condominium Unit Owner on or before closing.
- (g) Risk of Loss – In the event of a Voluntary Termination, and any casualty, as described in Sections 14 and 15 hereof, occurs prior to the date of closing, then the Voluntary Termination may be deemed to convert to an Involuntary Termination as provided herein and shall thereafter be treated accordingly as provided in this Section 19.
- (h) Costs and Prorations – Charges and other expenses customarily prorated in the County at the time of the closing shall be prorated at closing, effective as of 12:01 a.m. on the day of closing, and the Hotel Condominium Unit Owner and Shared Facilities Unit Owner shall each pay all costs and expenses as are respectively customarily paid by a seller and buyer of property of this type in the County at the time of closing.
- (i) Relationship of Parties - Nothing herein contained shall be deemed or interpreted to create between the Shared Facilities Unit Owner and Hotel Condominium Unit Owner the relationship of principal and agent, employer and employee, vendor and purchaser, or partners.
- (j) Closing - The sale and purchase of all Option Property for which the Shared Facilities Unit Owner has provided an Option Notice shall be closed simultaneously and within one hundred twenty (120) days following the determination of the sales price of the last parcel of Option Property to be purchased ("Closing Date"). If the Closing Date extends beyond the Option Period, then the Option Period shall be automatically extended through the Closing Date if required in order to prevent the Option from expiring. It shall be a condition to the Shared Facilities Unit Owner's obligation to close on any particular parcel of Option Property, that the Shared Facilities Unit Owner simultaneously close on all Option Property so as to unify the Condominium Property into one ownership, which condition shall be waivable in whole or in part in the sole and absolute discretion of the Shared Facilities Unit Owner.

Nothing herein contained shall be deemed to create an obligation on the Shared Facilities Unit Owner to purchase any Hotel Condominium Unit or exercise the Option. If Shared Facilities Unit Owner does not exercise the Option in accordance with its terms and within the Option Period, this Option and the rights of Shared Facilities Unit Owner shall terminate provided, however, the Option shall be deemed to automatically continue unless and until a termination of the Option is executed by the Shared Facilities Unit and recorded in the Public Records of the County.

- 19.2. Certificate. The Voluntary Termination or Involuntary Termination of the Condominium shall be evidenced by a certificate of the Association (the "Termination Certificate"), executed by its President (or Vice-President) and Secretary, certifying the fact of the termination, which shall become effective upon the Termination Certificate being recorded among the Public Records of

Broward County, Florida. If required pursuant to the Act or any rule promulgated by the Division as to commercial condominiums, within thirty (30) business days from the date the Termination Certificate is recorded among the Public Records of Broward County, Florida, the Association shall: (i) notify the Division of the date the Termination Certificate was recorded among the public records; (ii) notify the Division of the county where the Termination Certificate was recorded; (iii) provide the Division with the official records book and page number information for the Termination Certificate; and (iv) provide the Division with a copy of the recorded Termination Certificate, certified by the clerk of the circuit court. At any time prior to but after the time a Voluntary Termination or Involuntary Termination occurs or after the recording of the Termination Certificate, the Shared Facilities Unit Owner may place of record in the Public Records of the County a separate document evidencing the prospective termination and its option to purchase any or all of the Hotel Condominium Units as provided in this Declaration.

- 19.3. Shares of Owners After Termination. After termination of the Condominium, the Unit Owners shall own the Condominium Property and all assets of the Association applicable to this Condominium as tenants in common of undivided shares that shall be equal to the sum of the undivided shares in the Common Elements appurtenant to the Units prior to termination, so that the sum total of the ownership shall equal 100%. Such undivided shares are listed on Exhibit "D" attached hereto and made a part hereof

This Section may not be amended by not less than the affirmative vote of four-fifths (4/5ths) of all Voting the written consent of the Primary Institutional First Mortgagee and the Developer so long as it owns any Unit.

20. Additional Rights of Mortgagees and Others.

- 20.1. Availability of Association Documents. The Association shall have current and updated copies of the following available for inspection by Institutional Mortgagees during normal business hours or under other reasonable circumstances as determined by the Board: (a) this Declaration; (b) the Articles; (c) the By-Laws; (d) any rules and regulations promulgated by the Association; and (e) the books, records and financial statements of the Association.

- 20.2. Notices. Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of:

- (a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;
- (b) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit;
- (c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) any proposed action which requires the consent of a specified number of mortgage holders.

- 20.3. Additional Rights. Institutional First Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of an audited financial statement of the Association for the immediately preceding fiscal year if such statements were prepared; and (b) receive notices of and attend Association meetings.

21. Covenant Running With the Condominium Realty. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Condominium Realty and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Condominium Realty or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations, all as they may be amended from time to time. The acceptance of a deed or conveyance, whether or not it shall be so expressed in any such deed or other conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, all as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

22. DISCLAIMER OF WARRANTIES.

- 22.1. DISCLAIMER OF WARRANTIES. EXCEPT ONLY FOR THOSE WARRANTIES PROVIDED IN SECTION 718.203, FLORIDA STATUTES (AND THEN ONLY TO THE EXTENT APPLICABLE AND NOT YET EXPIRED), TO THE MAXIMUM EXTENT LAWFUL, DEVELOPER HEREBY DISCLAIMS ANY AND ALL AND EACH AND EVERY EXPRESS OR IMPLIED WARRANTIES, WHETHER ESTABLISHED BY STATUTORY LAW, COMMON LAW, CASE LAW OR OTHERWISE, AS TO THE

DESIGN, CONSTRUCTION, CONTINUANCE OF ANY PARTICULAR VIEW (IT BEING UNDERSTOOD AND AGREED THAT CONSTRUCTION OF ANY ADJACENT PROPERTIES MAY OBSTRUCT SUCH VIEW), SOUND AND/OR ODOR TRANSMISSION, EXISTENCE AND/OR DEVELOPMENT OF MOLDS, MILDEW, TOXINS OR FUNGI, FURNISHING AND EQUIPPING OF THE UNIT, SHARED COMPONENTS, COMMON ELEMENTS APPURTENANT THERETO, AND THE CONDOMINIUM PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, COMPLIANCE WITH ANY INITIAL PLANS OR FINAL PLANS, ALL WARRANTIES IMPOSED BY STATUTE (OTHER THAN THOSE IMPOSED BY SECTION 718.203, FLORIDA STATUTES, AND THEN ONLY TO THE EXTENT APPLICABLE AND NOT YET EXPIRED) AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES OF ANY KIND OR CHARACTER.

ALL COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, NOMINAL, EXEMPLARY, STATUTORY, AND ANY AND ALL OTHER DAMAGES, DIRECT, INDIRECT AND SECONDARY, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED:

- (a) AS TO ANY AND ALL AND EACH AND EVERY DISCLAIMED EXPRESS AND IMPLIED WARRANTIES HEREIN, WHETHER ESTABLISHED BY STATUTORY LAW, COMMON LAW, CASE LAW OR OTHERWISE;
- (b) AS TO EACH AND EVERY ITEM DISCLAIMED HEREIN;
- (c) AS TO ANY AND ALL AND EACH AND EVERY EXPRESS AND IMPLIED WARRANTIES WHICH CANNOT BY LAW BE DISCLAIMED, WHETHER SUCH WARRANTIES ARE ESTABLISHED BY STATUTORY LAW, COMMON LAW, CASE LAW OR OTHERWISE; AND
- (d) AS TO ANY OTHER CLAIMS, IF ANY, WHICH BY LAW CANNOT BE DISCLAIMED.

AS TO THOSE WARRANTIES PROVIDED IN SECTION 718.203, FLORIDA STATUTES (AND THEN ONLY TO THE EXTENT APPLICABLE AND NOT YET EXPIRED), TO THE MAXIMUM EXTENT LAWFUL, DEVELOPER HEREBY DISCLAIMS ANY AND ALL AND EACH AND EVERY ONE OF SAID WARRANTIES. AS TO EACH AND EVERY ITEM SO DISCLAIMED, ALL COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, NOMINAL, EXEMPLARY, STATUTORY, AND ANY AND ALL OTHER DAMAGES, DIRECT, INDIRECT AND SECONDARY, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED.

DEVELOPER HAS NOT GIVEN AND THE UNIT OWNER HAS NOT RELIED ON OR BARGAINED FOR ANY SUCH WARRANTIES. EACH UNIT OWNER, BY ACCEPTING A DEED TO A UNIT, OR OTHER CONVEYANCE THEREOF, WHETHER OR NOT IT SHALL BE SO EXPRESSED IN ANY SUCH DEED OR CONVEYANCE, SHALL BE DEEMED TO REPRESENT AND WARRANT TO DEVELOPER THAT IN DECIDING TO ACQUIRE THE UNIT, THE UNIT OWNER RELIED SOLELY ON SUCH UNIT OWNER'S INDEPENDENT INSPECTION OF THE UNIT, SHARED COMPONENTS, COMMON ELEMENTS APPURTENANT THERETO, AND THE CONDOMINIUM PROPERTY. THE UNIT OWNER HAS NOT RECEIVED NOR RELIED ON ANY WARRANTIES AND/OR REPRESENTATIONS FROM DEVELOPER OF ANY KIND, OTHER THAN AS EXPRESSLY PROVIDED HEREIN.

ADDITIONALLY, GIVEN THE CLIMATE AND HUMID CONDITIONS IN FLORIDA, MOLDS, MILDEW, TOXINS AND FUNGI MAY EXIST AND/OR DEVELOP WITHIN THE UNIT, SHARED COMPONENTS, COMMON ELEMENTS APPURTENANT THERETO, AND/OR THE CONDOMINIUM PROPERTY. EACH OWNER IS HEREBY ADVISED THAT CERTAIN MOLDS, MILDEW, TOXINS AND/OR FUNGI MAY BE, OR IF ALLOWED TO REMAIN FOR A SUFFICIENT PERIOD MAY BECOME, TOXIC AND POTENTIALLY POSE A HEALTH RISK. BY ACCEPTANCE OF A DEED TO A UNIT OR OTHER CONVEYANCE THEREOF, WHETHER OR NOT IT SHALL BE SO EXPRESSED IN ANY SUCH DEED OR CONVEYANCE, EACH OWNER SHALL BE DEEMED TO HAVE ASSUMED THE RISKS ASSOCIATED WITH MOLDS, MILDEW, TOXINS AND/OR FUNGI AND TO HAVE RELEASED THE DEVELOPER FROM ANY AND ALL LIABILITY RESULTING FROM SAME, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (WHICH MAY RESULT FROM, WITHOUT LIMITATION, THE INABILITY TO USE OR POSSESS THE UNIT, SHARED COMPONENTS, COMMON ELEMENTS APPURTENANT THERETO, AND/OR THE CONDOMINIUM PROPERTY, INCONVENIENCE, MOVING COSTS, HOTEL COSTS, STORAGE COSTS, LOSS OF TIME, LOST WAGES, LOST OPPORTUNITIES AND/OR PERSONAL INJURY), COMPENSATORY, PUNITIVE, NOMINAL, EXEMPLARY, STATUTORY, AND ANY AND ALL OTHER DAMAGES, DIRECT, INDIRECT AND SECONDARY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LEAKS, WET FLOORING AND

MOISTURE WILL CONTRIBUTE TO THE GROWTH OF MOLD, MILDEW, FUNGUS OR SPORES. EACH UNIT OWNER, BY ACCEPTANCE OF A DEED, OR OTHERWISE ACQUIRING TITLE TO A UNIT, WHETHER OR NOT IT SHALL BE SO EXPRESSED IN ANY SUCH DEED OR CONVEYANCE, SHALL BE DEEMED TO HAVE AGREED THAT DEVELOPER IS NOT RESPONSIBLE, AND THE DEVELOPER HEREBY DISCLAIMS ANY RESPONSIBILITY FOR ANY ILLNESS OR ALLERGIC REACTIONS, PERSONAL INJURY OR DEATH WHICH MAY BE EXPERIENCED BY THE UNIT OWNER, ITS FAMILY MEMBERS AND/OR ITS OR THEIR GUESTS, TENANTS AND INVITEES AND TO ANY PETS OF PERSONS AFOREMENTIONED IN THIS SENTENCE, AS A RESULT OF MOLD, MILDEW, FUNGUS OR SPORES LOCATED WITHIN THE UNIT, SHARED COMPONENTS, COMMON ELEMENTS APPURTENANT THERETO, AND/OR THE CONDOMINIUM PROPERTY. IT IS THE UNIT OWNER'S RESPONSIBILITY TO KEEP THE UNIT CLEAN, DRY, WELL-VENTILATED AND FREE OF CONTAMINATION.

FURTHER, EACH UNIT OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF A UNIT, WHETHER OR NOT IT SHALL BE SO EXPRESSED IN ANY SUCH DEED OR CONVEYANCE, UNDERSTANDS AND AGREES THAT THERE ARE VARIOUS METHODS FOR CALCULATING THE SQUARE FOOTAGE OF A UNIT, AND THAT DEPENDING ON THE METHOD OF CALCULATION, THE SQUARE FOOTAGE OF THE UNIT MAY VARY BY MORE THAN A NOMINAL AMOUNT. ADDITIONALLY, AS A RESULT OF IN THE FIELD CONSTRUCTION, OTHER PERMITTED CHANGES TO THE UNIT, AND SETTLING AND SHIFTING OF IMPROVEMENTS, ACTUAL SQUARE FOOTAGE OF A UNIT MAY ALSO BE AFFECTED. BY ACCEPTING TITLE TO A UNIT, THE APPLICABLE OWNER(S) SHALL BE DEEMED TO HAVE CONCLUSIVELY AGREED TO ACCEPT THE SIZE AND DIMENSIONS OF THE UNIT, REGARDLESS OF ANY VARIANCES IN THE SQUARE FOOTAGE FROM THAT WHICH MAY HAVE BEEN DISCLOSED AT ANY TIME PRIOR TO CLOSING, WHETHER INCLUDED AS PART OF DEVELOPER'S PROMOTIONAL MATERIALS OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THIS SECTION 22, DEVELOPER DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE ACTUAL SIZE, DIMENSIONS (INCLUDING CEILING HEIGHTS) OR SQUARE FOOTAGE OF ANY UNIT, AND EACH OWNER SHALL BE DEEMED TO HAVE FULLY WAIVED AND RELEASED ANY SUCH WARRANTY AND CLAIMS FOR LOSSES AND DAMAGES RESULTING FROM ANY VARIANCES BETWEEN ANY REPRESENTED OR OTHERWISE DISCLOSED SQUARE FOOTAGE AND THE ACTUAL SQUARE FOOTAGE OF THE UNIT.

- 22.2. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY SHARED FACILITIES UNIT OWNER OR ITS OR THEIR AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE SHARED FACILITIES UNIT OR SHARED COMPONENTS, INCLUDING, WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ANY EXPRESS OR IMPLIED WARRANTIES RELATING TO THE PHYSICAL CONDITION, DESIGN, OR CONSTRUCTION OF THE SHARED FACILITIES UNIT AND SHARED COMPONENTS, CONTINUANCE OF ANY PARTICULAR VIEW (IT BEING UNDERSTOOD AND AGREED THAT CONSTRUCTION OF ANY ADJACENT PROPERTIES MAY OBSTRUCT SUCH VIEW), SOUND TRANSMISSION, CONSTRUCTION, THE FURNISHING AND EQUIPPING THEREOF, ZONING, THE EASEMENTS AND USE RIGHTS IN AND TO THE SHARED FACILITIES UNIT AND SHARED COMPONENTS, THE EXISTENCE OF MOLDS, MILDEW, FUNGI AND/OR OTHER TOXINS WITHIN THE SHARED FACILITIES UNIT, COMPLIANCE WITH APPLICABLE LAWS, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF. SHARED FACILITIES UNIT OWNER HEREBY DISCLAIMS TO THE FULL EXTENT PROVIDED BY LAW, ANY AND ALL EXPRESS OR IMPLIED WARRANTIES WHATSOEVER INCLUDING ALL IMPLIED WARRANTIES OF HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, AS TO THE SHARED FACILITIES UNIT AND SHARED COMPONENTS, INCLUDING, WITHOUT LIMITATION, THOSE SET FORTH HEREIN. EACH UNIT OWNER BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS, WHETHER OR NOT IT SHALL BE SO EXPRESSED IN ANY SUCH DEED OR OTHER CONVEYANCE, SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL WARRANTIES INCLUDING BUT NOT LIMITED TO THOSE DISCLAIMED HEREIN WITH RESPECT TO THE SHARED FACILITIES UNIT AND THE SHARED COMPONENTS AND FURTHER WAIVES ALL COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, NOMINAL, EXEMPLARY, STATUTORY, AND ANY AND ALL OTHER DAMAGES, DIRECT, INDIRECT AND SECONDARY IN ANY WAY, DIRECTLY OR INDIRECTLY, RELATING TO OR ARISING FROM THE SHARED FACILITIES UNIT AND/OR SHARED COMPONENTS.

22.3. **ALL COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, NOMINAL, EXEMPLARY, STATUTORY, AND ANY AND ALL OTHER DAMAGES, DIRECT, INDIRECT AND SECONDARY, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED:**

- (a) **AS TO ANY AND ALL AND EACH AND EVERY DISCLAIMED EXPRESS AND IMPLIED WARRANTIES HEREIN, WHETHER ESTABLISHED BY STATUTORY LAW, COMMON LAW, CASE LAW OR OTHERWISE;**
- (b) **AS TO EACH AND EVERY ITEM DISCLAIMED HEREIN;**
- (c) **AS TO ANY AND ALL AND EACH AND EVERY EXPRESS AND IMPLIED WARRANTIES WHICH CANNOT BY LAW BE DISCLAIMED, WHETHER SUCH WARRANTIES ARE ESTABLISHED BY STATUTORY LAW, COMMON LAW, CASE LAW OR OTHERWISE; AND**
- (d) **AS TO ANY OTHER CLAIMS, IF ANY, WHICH BY LAW CANNOT BE DISCLAIMED.**

23. Additional Provisions.

23.1. Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid, sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

23.2. Interpretation.

- (a) Except where the Developer and/or Shared Facilities Unit Owner has authority over the applicable provision or matter in question (which decision by the Developer and/or Shared Facilities Unit Owner shall be binding), the Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation by the Association shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- (b) The Bureau of Standards and Registration of the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, has determined that the Condominium is a "commercial condominium" and not a "residential condominium or "mixed-use condominium" under the Act (the "Determination"). Accordingly, as a commercial condominium and not a residential condominium or mixed-use condominium, the provisions in the Prospectus and Condominium Documents, including the Restrictions and Easements Agreement, and any statutory provisions applicable specifically to residential condominiums or mixed-use condominiums and not to commercial condominiums, do not apply to the Condominium. A purchaser of a Unit agrees with the Developer, by execution and delivery of a Purchase Agreement to the Developer, to be bound by the Determination. All subsequent purchasers of a Hotel Condominium Unit shall be deemed to have agreed to be bound by the Determination by acceptance of a deed to a Hotel Condominium Unit or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance.

23.3. Mortgagees. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lien or of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.

23.4. Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.

23.5. Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two (2) separate capacities.

23.6. Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable

rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.

- 23.7. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 23.8. Waiver. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
- 23.9. Ratification. Each Hotel Condominium Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Hotel Condominium Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 23.10. Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Hotel Condominium Unit Owner, by reason of the acceptance of a deed to a Hotel Condominium Unit or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Condominium as such plan may be hereafter amended, and each such Hotel Condominium Unit Owner further appoints hereby and thereby the Developer as such Hotel Condominium Unit Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Hotel Condominium Unit Owners, any and all of such documents or consents. This Power of Attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without an affirmative vote of not less than four-fifths (4/5ths) of all Voting Interests of all Hotel Condominium Unit Owners, the consent of the Shared Facilities Unit Owner and the consent of the Developer.
- 23.11. Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 23.12. Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 23.13. Liability of the Association. Notwithstanding anything contained herein or in the Articles of Incorporation, By-Laws, any rules or regulations of the Association or any other document governing or binding the Association (collectively, the "Association Documents"), the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Unit Owner, occupant or user of any portion of the Condominium Property and/or Association Property including, without limitation, Unit Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:
- (a) it is hereby deemed to be the express intent of the Association Documents that the various provisions thereof that are enforceable by the Association and govern or regulate the uses of the properties have been written and are to be interpreted and enforced for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;
 - (b) the Association is not empowered to, and has not been created to, act as an entity that enforces or ensures either compliance with the laws of the United States, State of Florida, Broward County and/or any other jurisdiction or the prevention of tortious activities; and
 - (c) the provisions of the Association Documents setting forth the uses of assessments and/or which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

EACH HOTEL CONDOMINIUM UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE INCLUDING WITHOUT LIMITATION THE EXCLUDED PARTIES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND

CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREBY. As used herein, "Association" shall include within its meaning all of Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns. The provisions hereof shall also inure to the benefit of Developer, which shall be fully protected hereby.

23.14. Liability of Shared Facilities Unit Owner. Notwithstanding anything contained herein or in any of the Exhibits referenced herein or any other document governing or binding the Shared Facilities Unit Owner (collectively, the "Shared Facilities Unit Documents"), the Shared Facilities Unit Owner, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of the Association or any Hotel Condominium Unit Owner, occupant or user of any portion of the Condominium Property and/or the Shared Components, including, without limitation, Hotel Condominium Unit Owners and their guests, invitees, agents, servants, contractors or subcontractors and other Excluded Parties or for any property of any such persons. Without limiting the generality of the foregoing:

- (a) it is hereby deemed to be the express intent of the Shared Facilities Unit Documents that the various provisions thereof that are enforceable by the Shared Facilities Unit Owner and govern or regulate the uses of the properties have been written and are to be interpreted and enforced for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof; and
- (b) the Shared Facilities Unit Owner is not empowered to, and has not been created to, act as an entity that enforces or ensures either compliance with the laws of the United States, State of Florida, Broward County and/or any other jurisdiction or the prevention of tortious activities.

EACH HOTEL CONDOMINIUM UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT), THE ASSOCIATION, AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE INCLUDING WITHOUT LIMITATION THE EXCLUDED PARTIES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE SHARED FACILITIES UNIT OWNER ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE SHARED FACILITIES UNIT OWNER HAS BEEN DISCLAIMED HEREBY. As used herein, "Shared Facilities Unit Owner" shall include within its meaning all of its members, and its and their directors, officers, shareholders, employees, agents, contractors (including management companies), subcontractors, successors and assigns. The provisions hereof shall also inure to the benefit of Developer, which shall be fully protected hereby.

23.15. Consent of Shared Facilities Unit Owner and Adjoining Parcel Owner. Except as may be otherwise expressly stated herein or otherwise required, wherever the consent, approval, action, or inaction of the Shared Facilities Unit Owner or Adjoining Parcel Owner is needed or requested, either may use their absolute discretion in making such determination.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed, as of the ____ day of _____, 200__.

Witnessed by:

CAPRI RESORTS, LLC, a Florida limited liability corporation

By: Capri Manager, Inc., a Florida corporation, its manager

Sign Name: _____

Print Name: _____

By: _____ (CORP. SEAL)

Print Name: _____

Title: _____

Sign Name: _____

Print Name: _____

STATE OF FLORIDA)

)

SS:

COUNTY OF BROWARD)

The foregoing Declaration was acknowledged before me this ____ day of _____, 200__ by _____ as _____ of Capri Manager, Inc., a Florida corporation, as the manager of CAPRI RESORTS, LLC, a Florida limited liability company, in the capacity aforesated. He is personally known to me or produced a driver's license as identification.

Sign Name: _____

Print Name: _____

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

LIST OF EXHIBITS

Exhibit "A"	Legal Description of Condominium Realty
Exhibit "B"	Legal Description of Adjoining Parcel
Exhibit "C"	Survey, Graphic Description of Improvements, Plot Plans, Floor Plans
Exhibit "D"	Allocated Interests
Exhibit "E"	Articles of Incorporation
Exhibit "F"	By Laws and Rules and Regulations
Exhibit "G"	Guaranteed Assessments
Exhibit "H"	Shared Costs and Adjoining Parcel Costs Allocation

EXHIBIT "A"

TO DECLARATION OF CONDOMINIUM

LEGAL DESCRIPTION OF CONDOMINIUM REALTY

EXHIBIT "A"

Legal Description of Condominium Realty

A portion of Lots 18, 19, 20 and 21 - BIRCH ESTATES, according to the plat thereof as recorded in Plat Book 23, Page 24 of the Public Records of Broward County, Florida being more fully described as follows:

Commencing at the Northwest corner of said Lot 18; thence South 01°04'16" East on the West line of said Lot 18, a distance of 20.00 feet; thence North 88°55'44" East, a distance of 164.33 feet; thence South 01°04'16" East, a distance of 26.18 to the Point of Beginning; thence Northwesterly on a curve to the left whose chord bears North 71°53'07" East with a radius of 218.00 feet, a central angle of 16°10'15" an arc distance of 61.53 feet; thence South 01°04'16" East, a distance of 76.02 feet to a point on a curve; thence Southeasterly on a curve to the right whose chord bears North 88°55'44" East with a radius of 218.00 feet, a central angle of 54°33'33", an arc distance of 207.59 feet; thence North 01°04'16" West, a distance of 76.05 feet to a point on a curve; thence Southwesterly on a curve to the right whose chord bears South 80°50'06" West with a radius of 218.00 feet, a central angle of 38°23'18", an arc distance of 146.06 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County, Florida.

The vertical limits of the above-described perimetrical boundaries are between Elevation 68.83 NGVD on lower and Elevation 266.17 NGVD on upper.

TOGETHER WITH:

A portion of Lots 18, and 19 - BIRCH ESTATES, according to the plat thereof as recorded in Plat Book 23, Page 24 of the Public Records of Broward County, Florida being more fully described as follows:

Commencing at the Northwest corner of said Lot 18; thence South 01°04'16" East on the West line of said Lot 18, a distance of 20.00 feet; thence North 88°55'44" East, a distance of 20.00 feet to the Point of Beginning; thence South 01°04'16" East, a distance of 119.91 feet to a Point of Curvature; thence Southwesterly on a curve to the left with a radius of 5.00 feet; a central angle of 91°01'10" an arc distance of 7.94 feet; thence North 89°55'44" East, a distance of 139.92 feet; thence North 01°04'16" West, a distance of 12.50 feet to a point on a curve; thence Northwesterly on a curve to the right whose chord bears North 72°50'33" West with a radius of 228.00 feet, a central angle of 15°31'30", an arc distance of 61.78 feet; thence North 01°04'16" West, a distance of 87.21 feet; thence North 88°55'44" East, a distance of 29.58 feet; thence South 01°04'16" East, a distance of 9.17 feet; thence North 88°55'44" East, a distance of 28.33 feet; thence North 01°04'16" West, a distance of 14.83 feet; thence South 89°55'44" West, a distance of 144.33 feet to the Point of Beginning.

LESS:

Commencing at the Northwest corner of said Lot 18; thence South 01°04'16" East on the West line of said Lot 18, a distance of 20.00 feet; thence North 88°55'44" East, a distance of 55.08 feet; thence South 01°04'16" East, a distance of 69.17 feet to the Point of Beginning; thence continue South 01°04'16" East, a distance of 50.33 feet; thence North 88°55'44" East, a distance of 31.83 feet; thence North 01°04'16" West, a distance of 50.33 feet; thence South 88°55'44" West, a distance of 31.83 feet to the Point of Beginning.

The vertical limits of the above-described perimetrical boundaries are between Elevation 59.83 NGVD on lower and Elevation 71.5 NGVD on upper.

TOGETHER WITH:

A portion of Lots 18, 19, 20 and 21 - BIRCH ESTATES, according to the plat thereof as recorded in Plat Book 23, Page 24 of the Public Records of Broward County, Florida being more fully described as follows:

Commencing at the Northwest corner of said Lot 18; thence South 01°04'16" East on the West line of said Lot 18, a distance of 20.00 feet; thence North 88°55'44" East, a distance of 55.08 feet; thence South 01°04'16" East, a distance of 69.17 feet to the Point of Beginning; thence continue South 01°04'16" East, a distance of 50.33 feet; thence North 88°55'44" East, a distance of 31.83 feet; thence North 01°04'16" West, a distance of 50.33 feet; thence South 88°55'44" West, a distance of 31.83 feet to the Point of Beginning.

The vertical limits of the above-described perimetrical boundaries are between Elevation 51.50 NGVD on lower and Elevation 71.5 NGVD on upper.

TOGETHER WITH:

A portion of Lots 18, 19, 20 and 21 - BIRCH ESTATES, according to the Plat thereof as recorded in Plat Book 23, Page 24 of the Public Records of Broward County, Florida being more fully described as follows:

Commencing at the Northwest corner of said Lot 18; thence South 01°04'16" East on the West line of said Lot 18, a distance of 20.00 feet; thence North 88°55'44" East, a distance of 144.33 feet; thence South 01°04'16" East, a distance of 14.83 feet to the Point of Beginning; thence continue South 01°04'16" East, a distance of 11.35 feet to a point on a curve; thence Southeasterly on a curve to the left whose chord bears South 87°24'35" East with a radius of 218.00 feet, a central angle of 14°52'40" an arc distance of 56.61 feet; thence North 01°04'16" West, a distance of 26.77 feet to a point on a curve; thence Northeasterly on a curve to the left whose chord bears North 80°52'56" East with a radius of 257.96 feet, a central angle of 19°17'21", an arc distance of 86.84 feet; thence South 01°04'16" East, a distance of 118.09 feet; thence South 88°55'44" West, a distance of 86.92 feet; thence North 01°04'37" West, a distance of 3.10 feet to a point on a curve; thence Northwesterly on a curve to the right whose chord bears North 87°18'16" West with a radius of 218.00 feet, a central angle of 14°22'14", an arc distance of 54.68 feet; thence South 01°04'16" East, a distance of 10.18 feet to a point on a curve; thence Northwesterly on a curve to the right whose chord bears North 72°50'33" West with a radius of 228.00 feet, a central angle of 15°31'30", an arc distance of 61.78 feet; thence North 01°04'16" West, a distance of 87.21 feet; thence North 88°55'44" East, a distance of 29.58 feet; thence South 01°04'16" East, a distance of 9.17 feet; thence North 88°55'44" East, a distance of 28.33 feet to the Point of Beginning.

The vertical limits of the above-described perimetrical boundaries are between Elevation 59.83 NGVD on lower and Elevation 68.83 NGVD on upper.

All of said lands situate, lying and being in the City of Fort Lauderdale, Broward County, Florida.